

No. 15915 ✓

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United States  
Court of Appeals  
for the Ninth Circuit

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ROSEHEDGE CORPORATION, Appellant,

vs.

MILLIE STERETT, Appellee.

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Transcript of Record

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Appeal from the United States District Court  
For The District of Nevada

FILED

MAY 20 1958

PAUL P. O'BRIEN, CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF ATTORNEYS

WILLIAM G. RUYMANN,  
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Las Vegas, Nevada,

CHARLES J. KATZ and  
SAMUEL W. BLUM,  
325 West Eighth Street,  
707 Union Bank Building,  
Los Angeles 14, California,  
For the Appellant.

ARTHUR N. GREENBERG,  
6505 Wilshire Boulevard,  
Los Angeles 48, California,  
For the Appellee. [1]\*

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\* Page numbers appearing at bottom of page of Original Transcript of Record.



United States District Court For The  
District of Nevada

In Bankruptcy No. 921

IN THE MATTER OF THE PROPERTIES  
MOULIN ROUGE, INC., A Corporation and  
Successor in Interest to MOULIN ROUGE, a  
Limited Partnership, Bankrupt.

In Bankruptcy No. 925

IN THE MATTER OF MOULIN ROUGE, A  
LIMITED PARTNERSHIP,  
Bankrupt.

ORDER FOR SALE OF PROPERTY AND  
ORDER AUTHORIZING SALE OF PROP-  
ERTY FREE AND CLEAR OF LIENS

At Las Vegas, in said District, on the 6th day of  
July, 1956.

The Petition of Harry E. Miller, Trustee of the  
Estate of the above named Bankrupts, filed on the  
5th day of June, 1956, praying that said Trustee  
be authorized to sell, in accordance with the terms  
of the Bankruptcy Act, the property belonging to  
said estate, having come on for hearing before me  
on June 18, 1956, of which hearing notice was  
given by mailing copies of the Notice of Hearing  
filed herein on June 5, 1956 to all creditors, attor-  
neys, parties in interest, and others on June 7,  
1956 and the petitions of Harry E. Miller, trustee

of the above named bankrupts, filed on the 21st day of May, 1956 and the 5th day of June, 1956, praying that said trustee be authorized to sell free and clear of liens the property belonging to said estate, having also come on for hearing before me on June 18, 1956, of which hearing notice was given in accordance with the terms of the Order to Show Cause filed herein [2] on June 5, 1956 by mailing to each, every one and all of the lienholders of record, and as listed in the Petition filed on May 21, 1956, a copy of said Order to Show Cause on June 7, 1956, and at which hearing appeared Thomas A. Foley, attorney for the Bankrupts; Cyrus Levinthal, of Fink, Levinthal, and Lavery, attorneys for Jack Silverman; Samuel W. Blum and William G. Ruymann, attorneys for Leroy Investment Co., Inc. and Rosehedge Corporation; William E. Gelder, attorney for Stone Construction Co.; Ralph L. Denton, attorney for a lienholder; Breeze and Breeze, attorneys for a lienholder; Morton Galane, attorney for the creditors' committee; and other creditors and lienholders and their attorneys;

Now, upon the petitions of Harry E. Miller, Trustee herein, duly verified on May 21, 1956, and on June 5, 1956, upon all proceedings had before me at said hearing, at which time all parties were given an opportunity to be heard, and upon the Stipulation entered into on June 19, 1956 between Charles J. Katz, Samuel W. Blum, and William G. Ruymann, attorneys for Leroy Investment Co., Inc. and Rosehedge Corporation, and Quittner,



Stutman and Treister and Morse, Graves and Compton, attorneys for Harry E. Miller, the trustee, and it appearing that there is reasonable prospect that a surplus will be left for this estate upon the sale of the premises of the Moulin Rouge, described in said petitions, after the payment of the liens listed in the petition filed on May 21, 1956 and that the sale of said premises free and clear of said liens thereon is in the best interests of all of the creditors of this estate and will protect the interests of the said lienholders, it is hereby

Ordered, Adjudged and Decreed:

(1) That all objections made during the said hearing to the granting of said petitions be, and the same hereby are overruled.

(2) That the Stipulation entered into on June 19, 1956 between the attorneys for Leroy Investment Co., Inc. and Rosehedge [3] Corporation and the attorneys for Harry E. Miller, trustee herein, be, and the same hereby is approved and said stipulation is made a part of this order, as though specifically set forth herein in verbatim.

(3) That Harry E. Miller, trustee herein, be, and he hereby is, authorized to sell, in accordance with the terms of the Bankruptcy Act, all that certain property belonging to the estate of said Bankrupts mentioned in said petitions and described as follows:

That portion of the Northeast Quarter (NE  $\frac{1}{4}$ ) of the Southeast Quarter (SE  $\frac{1}{4}$ ) of Section 28,

Township 20 South, Range 61 East, M.D.B. & M., described as follows:

Commencing at the Southeast corner of the Northeast Quarter (NE  $\frac{1}{4}$ ) of the Southeast Quarter (SE  $\frac{1}{4}$ ) of Section 28; thence North  $2^{\circ} 50' 40''$  East a distance of 50.09 feet to a point; thence South  $89^{\circ} 18' 00''$  West along the North line of Bonanza Road a distance of 363.86 feet to the true point of beginning; thence continuing South  $89^{\circ} 18' 00''$  West a distance of 533.00 feet to the Southeast corner of that certain parcel of land conveyed by Edna Shulman to Alfred R. Child et ux by Deed recorded January 19, 1955, as Document No. 32228, Clark County, Nevada records; thence North  $1^{\circ} 24' 00''$  East a distance of 153.49 feet to a point; thence North  $43^{\circ} 36' 30''$  West a distance of 48.03 feet to a point; thence North  $1^{\circ} 24' 00''$  East a distance of 146.30 feet to the Northeast corner of said conveyed parcel; thence North  $89^{\circ} 18' 00''$  East a distance of 926.99 feet to a point; thence South  $1^{\circ} 24' 00''$  West a distance of 194.78 feet more or less to a Southeast corner of that certain parcel of land conveyed by J. A. Haggard et ux to Will Max Schwartz by deed recorded April 5, 1954, as Document No. 7190, Clark County, Nevada records; thence South  $89^{\circ} 18' 00''$  West a distance of 360.00 feet to an inverted corner of the last mentioned conveyed parcel; thence South  $1^{\circ} 24' 00''$  West a distance of 140.09 feet to the true point of beginning.

including the furniture, fixtures and other personal

property contained therein, upon such terms and conditions as the Court shall hereafter approve.

(4) That Harry E. Miller, Trustee herein, be, and he hereby is authorized to sell, in accordance with the terms of the Bankruptcy Act, all that certain property belonging to the estate of said bankrupts and described in full in paragraph 3 hereof, [4] *supra*, free and clear of the liens set forth in the petition filed on May 21, 1956 which consist of the following, to-wit:

1. State, County and City taxes for the period January 1, 1955 through June 30, 1955, now due and payable.

2. Assessment No. 100-36 for street improvement in the City of Las Vegas, the amount and method of payment of this assessment is unknown at this time.

3. That certain Claim of Lien, dated February 8, 1954 and recorded February 10, 1955, as Document No. 34962, in Book No. 40 of Official Records, in the Office of the County Recorder of Clark County, Nevada, wherein Lawrence Hawthorne, doing business as Hawthorne Construction Co., a construction contractor, claims a lien against Moulin Rouge Associates, Alexander Bisno and Louis Rubin, in the sum of \$51,340.00, for work, labor and materials and services furnished and performed for the construction of the Moulin Rouge Hotel.

4. By assignment of Lien, dated October 24,

1955 and recorded November 10, 1955, as Document No. 61159, in Book No. 73 of Official Records, in the Office of the County Recorder of Clark County, Nevada, the hereinabove described Claim of Lien was assigned by Lawrence Hawthorne and Tatiana Hawthorne to D. B. Roberts, and to his executors, administrators and assigns.

5. A Trust Deed to Pioneer Title Insurance and Trust Company, a corporation, Trustee, executed by Edna Shulman, a single woman, to secure her note in the sum of \$600,000.00, which note is referred to, but not set out, in favor of Bisno & Bisno, Inc., a Nevada corporation, and to secure such other sums as may become due under the terms of said Trust Deed, dated July 9, 1954 and recorded July 12, 1954, as Document No. 14830, in Book No. 15 of Official Records, in the Office of the County Recorder of Clark County, Nevada, said Trust Deed is referred to in the Stipulation dated June 19, 1956 between the Trustee herein and Leroy Investment Co., Inc., and Rosehedge Corporation, and the terms of said Stipulation shall govern the right of the parties thereto.

6. By instrument dated April 14, 1955 and recorded April 29, 1955, as Document No. 45179, in Book No. 53 of Official Records, in the Office of the County Recorder of Clark County, Nevada, the hereinabove described Trust Deed was assigned by Bisno & Bisno, Inc., to Alexander Bisno and Louis Rubin.

7. By instrument dated April 18, 1955 and re-

corded April 29, 1955, as Document No. 45180, in Book 53 of Official Records, in the Office of the County Recorder of Clark County, Nevada, the hereinabove described Trust Deed was assigned by Louis Rubin and Alexander Bisno, to Leroy Investment Co., Inc., a California Corporation, given as collateral security for the payment of a certain promissory note executed and delivered by the Assignor to the [5] Assignee to secure the payment of the principal sum of \$250,000.00 and interest. Reference to said instrument is made for full particulars.

8. By instrument dated May 24, 1955, and recorded May 25, 1955, as Document No. 47538, in Book No. 56 of Official Records, in the Office of the County Recorder of Clark County, Nevada, the hereinabove described Trust Deed was assigned by Louis Rubin and Alexander Bisno to Rosehedge Corporation, given as collateral security for the payment of a certain note executed and delivered by the Assignor to the Assignee to secure the payment of the principal sum of \$195,000.00, and interest. Reference to said instrument is made for full particulars.

9. A Chattel Mortgage executed by Moulin Rouge by Alexander Bisno and Louis Rubin, to secure their note in the sum of \$35,327.52, with interest at the rate of 6% per annum, in favor of Chairmasters, Inc., a New York Corporation, and to secure such other sums as may become due under the terms of said Chattel Mortgage dated May 9,



1955 and recorded May 13, 1955, as Document No. 46525, in Book No. 54 of Official Records, in the Office of the County Recorder of Clark County, Nevada. No search of the records has been made to determine if the personal property covered by this Chattel Mortgage is clear of other liens. Reference to said instrument is made for full particulars.

10. A Chattel Mortgage executed by Alexander Bisno and Louis Rubin, doing business as Moulin Rouge, to secure their note in the sum of \$21,500.00, with interest from June 18, 1955 at the rate of 6% per annum, in favor of First National Bank of Nevada, a corporation, covering certain personal property situate on the hereinabove described property, and to secure such other sums as may become due under the terms of said Chattel Mortgage dated May 17, 1955 and recorded May 17, 1955, as Document No. 46777, in Book No. 55 of Official Records, and filed in File 17, in the Office of the County Recorder of Clark County, Nevada. No search of the records has been made to determine if said personal property is clear of other liens.

11. A Chattel Mortgage executed by Alexander Bisno, a married man, and Louis Rubin, a married man, General Partners, doing business as Moulin Rouge, a partnership, and Alexander Bisno, individually and Louis Rubin, individually, to secure their note in the sum of \$195,000.00, in favor of Rosehedge Corporation, a California Corporation, covering certain personal property situate on the

hereinabove described property, and to secure such other sums as may become due under the terms of said Chattel Mortgage, dated May 24, 1955 and recorded as Document No. 47539, in Book No. 56 of Official Records, in the Office of the County Recorder of Clark County, Nevada. No search of the records [6] has been made to determine if the personal property covered by this Chattel Mortgage is clear of other liens. Reference is made to said instrument for full particulars. Said instrument was recorded May 25, 1955.

12. That certain Notice of Claim of Lien, recorded June 24, 1955, as Document No. 50313, in Book No. 59 of Official Records, in the Office of the County Recorder of Clark County, Nevada, wherein E. M. Kaufield and Clifford L. Kaufield, doing business as E. M. Kaufield & Son, a general partnership, claim a lien against Alexander Bisno, a married man, and Louis Rubin, a married man, general partners, doing business as Moulin Rouge, in the amount of \$9,886.57 for materials furnished for the improvement of the property covered by this report.

13. The effect of a Chattel Mortgage executed by Moulin Rouge, a Limited Partnership, Louis Rubin and Alexander Bisno, General Partners thereof, to secure their note in the sum of \$35,000.00 with interest from July 5, 1955, at the rate of 12% per annum, in favor of Millie Sterett, covering certain personal property situate on the hereinabove described property, and to secure such other sums as

may become due under the terms of said Chattel Mortgage dated July 5, 1955 and recorded July 13, 1955, as Document No. 51829, in Book No. 61 of Official Records, and filed in File 19, in the Office of the County Recorder of Clark County, Nevada. No search of the record has been made to determine if said personal property is clear of other liens. Reference to said instrument is made for full particulars.

14. That certain Notice of Claim of Lien dated July 16, 1955, and recorded July 20, 1955, as Document No. 52424, in Book No. 62 of Official Records, in the Office of the County Recorder of Clark County, Nevada, wherein Home Lumber Co., of Nevada, a Nevada corporation claims a lien against the owners of the hereinabove described property for materials furnished in the sum of \$1,204.96.

15. A Trust Deed to Nevada Title Guaranty Company, a Nevada corporation, Trustee, executed by Moulin Rouge by and through Alexander Bisno and Louis Rubin, general partners, to secure their note in the sum of \$250,000.00, which note is referred to, but not set out, in favor of Jack Silverman, and to secure such other sums as may become due under the terms of said Trust Deed, dated July 27, 1955, and recorded August 9, 1955, as Document No. 54168, in Book No. 64 of Official Records, in the Office of the County Recorder of Clark County, Nevada.

16. A Chattel Mortgage executed by Moulin Rouge, a Co-partnership, to secure a note in the



sum of \$250,000.00 being also secured by a Deed of Trust of record and also to secure the additional sum of \$25,000.00, with interest at the rate of 5% per annum, until paid, in favor of Jack Silverman, and to secure such other sum as may become due [7] under the terms of said Chattel Mortgage, dated August 21, 1955, and recorded August 22, 1955, as Document No. 55158, in Book No. 65 of Official Records, and filed in File 20, in the Office of the County Recorder of Clark County, Nevada.

17. That certain Notice of Claim of Lien, wherein Western Heating and Ventilating, Inc., a Nevada corporation, claims a lien against Alexander Bisno, a married man, and Louis Rubin, a married man, general partners, doing business as Moulin Rouge, for materials and labor furnished in the buildings situate on the property covered by this report in the sum of \$31,812.37. Said instrument was recorded August 25, 1955, as Document No. 55559, in Book No. 66 of Official Records in the Office of the County Recorder of Clark County, Nevada.

18. That certain Notice of Federal Tax Lien, dated August 26, 1955 and recorded August 28, 1955, as Document No. 55676, in Book No. 66 of Official Records, and filed in File 20, in the Office of the County Recorder of Clark County, Nevada, wherein V. W. Evans, District Director of Internal Revenue claims a lien for W T-FICA and Excise Taxes for the second quarter of 1955, in the sum of \$32,559.60, against Alexander Bisno and Louis Rubin, Moulin Rouge.

19. That certain Notice of Claim of Lien recorded September 8, 1955, as Document No. 56475, in Book No. 67 of Official Records, in the Office of the County Recorder of Clark County, Nevada, wherein Joseph P. Gedwill, doing business as Builders Electric Service Co., a general electrical contractor, claims a lien against Alexander Bisno, a married man and Louis Rubin, a married man, general partners, doing business as Moulin Rouge, for materials furnished in the improvement of the property covered by this report. Amount of lien is \$2,482.77.

20. That certain Notice of Claim of Lien, recorded September 15, 1955, as Document No. 56984, in Book 67 of Official Records, in the Office of the County Recorder of Clark County, Nevada, wherein Clifford L. Kaufield, doing business as E. M. Kaulfield & Son, claims a lien against Alexander Bisno, a married man, and Louis Rubin, a married man, general partners, doing business as Moulin Rouge, in the sum of \$832.30, for materials and labor furnished in the improvement of the property covered by this report.

21. That certain Notice of Claim of Lien, dated September 23, 1955, and recorded September 28, 1955, as Document No. 57857, in Book No. 69 of Official Records, in the Office of the County Recorder of Clark County, Nevada, wherein the State of Nevada Employment Security Department claims a lien against Alexander Bisno and Louis [8] Rubin, doing business as Moulin Rouge, in the sum

of \$4,947.70, for the Unemployment Compensation Fund of the State of Nevada.

22. That certain Notice of Claim of Lien, recorded October 10, 1955, as Document No. 58769, in Book 70 of Official Records, in the Office of the County Recorder of Clark County, Nevada, wherein Wilgar Bros. Glass Co., Inc., a Nevada corporation, claims a lien against Alexander Bisno, a married man, and Louis Rubin, a married man, general partners, doing business as Moulin Rouge, and Stone Construction Co. and Orange Fixture Co., in the sum of \$4,714.87, for materials and labor furnished in the construction of a building located on the property covered by this report.

23. That certain Notice of Federal Tax Lien under Internal Revenue Laws, recorded October 11, 1955, as Document No. 58824, in Book No. 70 of Official Records, in the Office of the County Recorder of Clark County, Nevada, wherein V. W. Evans, U. S. Collector of Internal Revenue for the District of Nevada, claims a lien for Excise (Cas.) for the period August and July, 1955, in the amount of \$32,403.64, against Moulin Rouge-Alexander Bisno and Louis Rubin.

24. That certain Notice of Claim of Lien, recorded October 11, 1955, as Document No. 58852, in Book No. 70 of Official Records, in the Office of the County Recorder of Clark County, Nevada, wherein Vegas Heating & Sheet Metal Co., Inc., a Nevada corporation, claims a lien against Alexander Bisno and Louis Rubin, doing business as

Moulin Rouge and Edward Stone, Paul Stone and Mack Stone, doing business as Stone Construction Company, in the sum of \$1,745.70, for materials and labor furnished in the construction of a building located on the property covered by this report.

25. A Writ of Attachment issued out of the Eighth Judicial District Court of the State of Nevada, in and for the County of Clark, under Case No. 74696, entitled Western Electric Displays, Inc., a Nevada corporation, Plaintiff, vs. Moulin Rouge Hotel, Inc., a corporation, Alexander Bisno and Louis Rubin, general partners, doing business as Moulin Rouge Hotel, and Sidney R. Rubin, also known as Sidney M. Dubbin, doing business as Moulin Rouge, Defendants, attaching all right, title and interest of record in the same of the Defendants, recorded October 13, 1955, as Document No. 59048, in Book No. 70 of Official Records, in the Office of the County Recorder of Clark County, Nevada. Amount of demand is \$62,375.26.

26. That certain Notice of Supplemental Claim of Lien, dated October 12, 1955, and recorded October 17, 1955, as Document No. 59263, in Book No. 70 of Official Records, in the Office of the County [9] Recorder of Clark County, Nevada, wherein the State of Nevada Employment Security Department claims a lien against Alexander Bisno and Louis Rubin, doing business as Moulin Rouge, in the sum of \$9,504.00 for the Unemployment Compensation fund of the State of Nevada.

27. That certain Notice of Claim of Lien, recorded October 19, 1955, as Document No. 59470, in Book 71 of Official Records, in the Office of the County Recorder of Clark County, Nevada, wherein Paul Stone, Mack Stone and Edward Stone, a co-partnership doing business as Stone Construction Company claims a lien against Properties Moulin Rouge, Inc., a corporation in the sum of \$32,500.00, for materials and labor furnished in the construction of a building located on the property covered by this report.

28. That certain Notice of Federal Tax Lien under Internal Revenue Laws, recorded October 24, 1955, as Document No. 59708, in Book No. 71 of Official Records, in the Office of the County Recorder of Clark County, Nevada, wherein V. W. Evans, U. S. Collector of Internal Revenue for the District of Nevada, claims a lien for excise and WT-FICA Taxes in the amount of \$55,163.37, against Moulin Rouge Hotel, Inc.

29. That certain Notice of Federal Tax Lien under Internal Revenue Laws, recorded October 24, 1955, as Document No. 59709, in Book No. 71 Official Records, in the Office of the County Recorder of Clark County, Nevada, wherein V. W. Evans, U. S. Collector of Internal Revenue for the District of Nevada, claims a lien for WT-FICA taxes for the third quarter of 1955, in the amount of \$67,350.11, against A. Bisno and L. Rubin - Moulin Rouge.

30. That certain Notice of Claim of Lien, re-



corded October 24, 1955, as Document No. 59734, in Book No. 71 of Official Records, in the Office of the County Recorder of Clark County, Nevada, wherein Joseph G. Roberts and Frank Scott, doing business as Roberts Roof and Floor Company, claims a lien against Moulin Rouge Hotel, in the sum of \$154.00 for materials and labor furnished in the construction of a building located on the property covered by this report.

31. That certain Notice of Claim of Lien, recorded October 26, 1955, as Document No. 59865, in Book No. 71 of Official Records, in the Office of the County Recorder of Clark County, Nevada, wherein Harold R. Adams, doing business as Rexford Supply Company, claims a lien against the Moulin Rouge Hotel and Alexander Bisno, a married man and Louis Rubin, a married man, general partners doing business as the Moulin Rouge Hotel, in the sum of \$98.42, for materials furnished in the construction of a building located on the property covered by this report. [10]

32. That certain Notice of Federal Tax Lien under Internal Revenue Laws, recorded November 15, 1955, as Document No. 61460, in Book No. 73 of Official Records, in the Office of the County Recorder of Clark County, Nevada, wherein V. W. Evans, U. S. Collector of Internal Revenue for the District of Nevada, claims a lien for WT-FICA and Excise Taxes in the amount of \$133,691.80, against Moulin Rouge Partnership consisting of George C. Altman, et al.

33. That certain Notice of Claim of Lien, recorded November 15, 1955, as Document No. 61461, in Book No. 73 of Official Records, in the Office of the County Recorder of Clark County, Nevada, wherein M. J. Disiase, Paint Contractor, claims a lien against the Moulin Rouge Hotel, a general partnership comprised of Alexander Bisno, a married man, and Louis Rubin, a married man, doing business as the Moulin Rouge, now doing business and known as the Moulin Rouge Properties, Inc., in the sum of \$1,327.15, for materials furnished in the construction of a building located on the property covered by this report.

34. The effect of that certain Mechanic's Lien, recorded April 20, 1955, as Document No. 44396, in Book No. 52 of Official Records, in the Office of the County Recorder of Clark County, Nevada, wherein Mehring and Hanson Company claims a lien against Alexander Bisno and Louis Rubin, in the sum of \$5,825.58, for materials furnished in the construction of a building located on the property covered by this report.

35. That certain Amended Notice of Claim of Lien, recorded November 17, 1955, as Document No. 61749, in Book No. 73 of Official Records, in the Office of the County Recorder of Clark County, Nevada, wherein Paul Stone, Mack Stone and Edward Stone, a co-partnership, doing business as Stone Construction Company, claims a lien against Properties Moulin Rouge, Inc., a corporation, in the sum of \$32,500.00 for materials and labor fur-

nished in the construction of a building located on the property covered by this report.

(5) That the liens listed in Paragraph 4 hereof, supra, be, and the same hereby are transferred to the net proceeds of the sale of the property covered by said liens, subject, however to the terms of the Stipulation dated June 19, 1956 between Trustee and Leroy Investment Co., Inc. and Rosehedge Corporation, which is made a part of this order.

(6) That the actual cost of insurance premiums and the actual and necessary costs and expenses of preservation of the [11] estate, incurred since the filing of the petitions in bankruptcy, including the actual and necessary costs and expenses of the sale of the property described in paragraph 3 hereof, shall be entitled to priority over, and shall be prior to the liens described in paragraph 4 hereof, supra, and to the claims of general creditors of the bankrupts.

/s/ JOHN C. MOWBRAY,  
Referee In Bankruptcy. [12]

[Stamped]: Received and Filed July 6, 1956.  
John C. Mowbray, Referee in Bankruptcy.

[Endorsed]: Filed October 19, 1957.



[Title of District Court and Cause.]

PROOF OF CLAIM IN BANKRUPTCY—  
AS A SECURED CLAIM

State of California,  
County of Los Angeles—ss.

Millie Sterett, of No. 2210 Linnington Avenue,  
in Los Angeles, County of Los Angeles, State of  
California, being duly sworn, deposes and says:

If Claimant Is An Individual:

1 (a). That he is the claimant herein.

2. That the above-named bankrupt (or debtor)  
was at and before the filing by (or against) him of  
the petition herein (for adjudication of bank-  
ruptcy), and still is, justly and truly indebted (or  
liable) to said deponent (or co-partnership or cor-  
poration), in the sum of Thirty-Five Thousand and  
No/100 dollars (\$35,000.00), plus interest.

3. That the consideration of said debt (or lia-  
bility) is as follows:

Money loaned evidenced by Promissory Note and  
secured by Chattel Mortgage as per annexed certi-  
fied copy.

\* \* \* \* \*

6. That deponent (or said co-partnership or said  
corporation) does not hold, and has not, nor has  
any person by his (or its) order, or to deponent's  
knowledge or belief, for his (or its) use, had or  
received, any security or securities for said debt  
(or liability), except Chattel Mortgage, certified

copy of which is hereto annexed and made a part hereof.

7. [If the debt or liability is found upon an instrument of writing.] That the instrument upon which said debt (or liability) is founded is attached hereto (or is lost or destroyed, as set forth in the affidavit attached hereto).

8. [If the debt is founded upon an open account.] That the said debt was (or will become) due on October 5, 1955 (or that the average date thereof is .....); that no note, or other negotiable instrument, has been received for such account, or any part thereof (or that the said debt is evidenced by a note, or other negotiable instrument, which is attached hereto); and that no judgment has been rendered thereon, except Promissory Note as per annexed copy and Chattel Mortgage as per annexed certified copy.

9. This claim is filed as a Secured Claim.

Undersigned creditor does not waive security.

/s/ MILLIE STERETT.

Subscribed and sworn to before me this 10th day of July, 1956.

[Seal] /s/ SHIRLEY F. ARON,  
Notary Public in and for said County and State.  
My Commission Expires March 4, 1960.

[Note: Promissory Note is the same as set out in the Mortgage of Chattels at page 24 of this printed record.]

51829 (5-1)

Book 61

Mortgage of Chattels

This Mortgage, Made this 5th day of July, 1955 by Moulin Rouge, a Limited Partnership, Louis Rubin and Alexander Bisno, General Partners thereof, of Las Vegas, County of Clark, State of Nevada, Mortgagor, to Millie Sterett of Los Angeles, County of Los Angeles, State of California, Mortgagee,

Witnesseth: That the Mortgagor mortgages to the Mortgagee all that certain personal property situated and described as follows, to wit:

All furniture and furnishings and equipment now, at the time of the execution hereof, and hereafter until payment in full of the obligation secured hereby situate in the main building, and rooms thereof, of the Moulin Rouge Hotel, 900 West Bonanza Road, City of Las Vegas, County of Clark, State of Nevada, each of said rooms (said rooms consisting of 105 in number, exclusive of the main building, Casino and Dining Room), at the time hereof, containing the following, to wit:

- |                     |                |
|---------------------|----------------|
| 1 Chest-desk        | 1 Floor Lamp   |
| 1 Desk Chair        | 1 Headboard    |
| 1 Overstuffed Chair | 2 Box Springs  |
| 2 Night Stands      | 2 Mattresses   |
| 1 Coffee Table      | 2 Metal Frames |
| 2 Table Lamps       | 2 Pictures     |

the main building, Casino and Dining Room containing, in general, the following, to wit:

All the carpeting in the Main Building, Casino and Dining Room  
as security for the payment to Mortgagee of Thirty Five Thousand and No/100 (\$35,000.00) Dollars according to the terms and conditions of a certain Promissory Note, of even date herewith substantially in form as follows:

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\$35,000.00, Las Vegas, Nevada, July 5, 1955.

Ninety (90) days after date, for value received, We promise to pay to Millie Sterett, or order, at 2210 Linnington Avenue, Los Angeles, California the sum of Thirty Five Thousand and No/100 Dollars, with interest from July 5, 1955 until paid, at the rate of 12% per cent per annum, payable At Maturity.

Should default be made in payment of interest when due the whole sum of principal and interest shall become immediately due at the option of the holder of this note. Principal and interest payable in lawful money of the United States. If action be instituted on this note We promise to pay such sum as the Court may fix as attorney's fees. This note is secured by a Mortgage of Chattels.

Moulin Rouge,

A Limited Partnership,

Louis Rubin and Alexander Bisno,

General Partners thereof,

/s/ By Louis Rubin,

General Partner,

By Alexander Bisno,

General Partner.

This mortgage also secures: (a) any and all renewals of said promissory note; (b) the repayment of all sums and amounts that may be necessarily advanced or expended by Mortgagee for the maintenance or preservation of the mortgaged property, or any part thereof; (c) to the maximum extent and amount of ..... Dollars (\$.....), any and all other sums that may hereafter be advanced by Mortgagee to or for the benefit of Mortgagor, any and all other expenditures that may hereafter be made by Mortgagee pursuant to the provisions hereof or for the benefit of or at the instance of Mortgagor, and any and all other indebtednesses and obligations of Mortgagor to Mortgagee that may hereafter be incurred.

Said mortgagor promises that he will, during the continuance hereof, keep the mortgaged property in good condition and repair; and further that he will not remove, nor permit to be removed, any part of said property from the above premises without the written consent of the Mortgagee first had and obtained; and further that he will provide, maintain and deliver to Mortgagee satisfactory fire and other insurance policies covering said property in amounts and companies satisfactory to Mortgagee and with loss, if any, payable to the Mortgagee, as his interest may appear.

The said mortgagor hereby declares and warrants to the mortgagee that he is the absolute and sole owner, and is in possession, of all said mortgaged



property, and that the same is free and clear of all liens, encumbrances and adverse claims.

It is further agreed that, if said mortgagor shall fail to make payment of any part of the principal or interest as provided in said promissory note at the time and in the manner therein specified, or if any breach be made of any obligation or promise of the said mortgagor herein contained or secured hereby, then the whole principal sum unpaid on said promissory note, with interest accrued thereon, shall immediately become due and payable, at the option of mortgagee; and the said mortgagee may at once proceed to foreclose this mortgage according to law; or the said mortgagee may, at his option, and he is hereby empowered so to do, enter upon the premises where the said mortgaged property may be and take possession thereof, and remove, sell and dispose of the same, and from the proceeds of sale retain all costs and charges incurred by him in the taking or sale of said property, including any reasonable attorney's fees thereby incurred; also, he may take all sums due him on said promissory note under any provisions hereof, including reasonable attorney's fees; and any surplus of such proceeds remaining shall be paid to the mortgagor.

It is further agreed that upon any sale of the mortgaged property according to law, or under the power herein given, that the said mortgagee may bid on the said sale, or make a purchase of the said mortgaged property, or any part thereof.



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Wherever herein the word "Mortgagor" appears, it shall and does denote Moulin Rouge, a Limited Partnership whereof Alexander Bisno and Louis Rubin are the General Partners, including the entire of the right, title, interest and estate of the said Alexander Bisno and said Louis Rubin; the word "he" with reference to the Mortgagor refers to said Partnership and the aforesaid General Partners.

This Mortgage of Chattels is executed in behalf of Mortgagor by Louis Rubin, one of the two General Partners thereof. The said Louis Rubin does hereby represent and warrant unto the Mortgagee that he does have the authority, power and capacity to execute this Mortgage of Chattels in behalf of said Moulin Rouge, a Limited Partnership, and that this Mortgage of Chattels does constitute a valid subsisting first lien upon all of the property mortgaged hereby.

In this Mortgage, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number the plural.

In Witness Whereof, the Mortgagor has executed this instrument.

Moulin Rouge,

A Limited Partnership,

Alexander Bisno and Louis Rubin,

General Partners,

By Alexander Bisno,

General Partner,

/s/ By Louis Rubin,

General Partner.

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## Mortgage of Chattels

When Recorded Mail To Millie Sterett, 2210 Lin-  
nington, Los Angeles 64, Calif.

51829 (5-5)

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State of Nevada,  
County of Clark—ss.

On this 5th day of July, 1955, before me, Thomas A. Foley, a Notary Public in and for said County and State, personally appeared Louis Rubin, known to me to be, and proved to me on the oath of the said Louis Rubin to be, one of the General Partners of the Partnership that executed the within instrument, and acknowledged to me that such Partnership executed the same.

Witness my hand and Official Seal.

[Seal]      /s/ Thomas A. Foley,  
Notary Public in and for said County and State.  
My Commission Expires May 8, 1957.

## Certification of Copy

State of Nevada,  
County of Clark—ss.

I, Paul C. O'Malley, the duly elected, qualified and acting Recorder of Clark County, in the State of Nevada, do hereby certify that the attached is a true, full and correct copy of the original Mortgage of Chattels against Moulin Rouge, a Limited Partnership.

Filed July 13, 1955 in file 61 No. 51829 of official records now on file and of record in this office.

In Witness Whereof, I have hereunto set my hand and affixed the seal of my office, in Las Vegas, Nevada, this 25th day of June, A.D. 1956.

[Seal] Paul C. O'Malley,  
County Recorder,

/s/ By M. Mankiewicz,  
Deputy.

[Stamped]: Received and Filed July 13, 1956.  
John C. Mowbray, Referee in Bankruptcy.

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[Title of District Court and Causes.]

BID

To the Honorable John C. Mowbray, Referee:

The undersigned, S. Kohn, by and through her duly authorized attorneys, Messrs. Charles J. Katz, Esquire, and Robert J. Magdlen, Esquire, hereby offers to purchase all of the real property, together with the improvements thereon situated (which real property is more particularly described in Exhibit "1" hereto) for the sum of \$116,000.00, cash, free and clear of and from all liens, claims and encumbrances, excepting the following:

1. State, County and City Taxes for the period January 1, 1955 through June 30, 1955, and to date now due and payable, or owing though not now payable. [13]

2. Assessment No. 100-36 for street improvement in the City of Las Vegas, the amount and method

of payment of this assessment is unknown at this time.

3. A trust deed to Pioneer Title Insurance and Trust Company, a corporation, Trustee, executed by Edna Shulman, a single woman, to secure her note in the sum of \$600,000.00, which note is referred to, but not set out, in favor of Bisno & Bisno, Inc., a Nevada Corporation, and to secure such other sums as may become due under the terms of said trust deed, dated July 9, 1954 and recorded July 12, 1954, as Document No. 14830, in Book No. 15 of Official Records, in the Office of the County Recorder of Clark County, Nevada, said Trust Deed is referred to in the Stipulation dated June 19, 1956 between the Trustee herein and LeRoy Investment Co., Inc. and Rosehedge Corporation, and the terms of said Stipulation shall govern the right of the parties thereto.

4. By instrument dated April 14, 1955 and recorded April 29, 1955, as Document No. 45179, in Book No. 53 of Official Records, in the Office of the County Recorder of Clark County, Nevada, the hereinabove described Trust Deed was assigned by Bisno & Bisno, Inc. to Alexander Bisno and Louis Rubin.

5. By instrument dated April 18, 1955 and recorded April 29, 1955, as Document No. 45180, in Book 53 of Official Records, in the Office of the County Recorder of Clark County, Nevada, the hereinabove [14] described Trust Deed was assigned by Louis Rubin and Alexander Bisno, to LeRoy Investment Co., Inc., a California corpora-

tion, given as collateral security for the payment of a certain promissory note executed and delivered by the assignor to the Assignee to secure the payment of the principal sum of \$250,000.00 and interest. Reference to said instrument is made for full particulars.

8. By instrument dated May 24, 1955 and recorded May 25, 1955, as Document No. 47538, in Book No. 56 of Official Records, in the Office of the County Recorder of Clark County, Nevada, the hereinabove described Trust Deed was assigned by Louis Rubin and Alexander Bisno to Rosehedge Corporation, given as collateral security for the payment of a certain note executed and delivered by the Assignor to the Assignee to secure the payment of the principal sum of \$195,000.00, and interest, reference to said instrument is made for full particulars.

being sub-paragraphs 1, 2, 5, 6, 7, and 8 of paragraph (4) of that certain Order for Sale on file herein and dated July 6, 1956.

Additionally and for the same consideration and as a part of this transaction, there shall be conveyed to the purchaser, by bill of sale, all of the right, title, interest and estate of the Trustee herein in and to all of the furniture, furnishings, gaming equipment of all kinds, and all other tangible personal property pertaining to the business of the Moulin Rouge; but, subject, however, to all valid and subsisting conditional sales contracts and chattel mortgages against said personal property.



Upon acceptance of this offer, the purchaser shall be let into peaceable possession of all of said assets pending the closing of the aforesaid escrow.

The foregoing sale of real property shall be consummated through an escrow to be opened upon the acceptance of said bid by the Court and the purchase price will be paid through escrow, and purchaser shall obtain a policy of title insurance guaranteeing title to be free and clear, except as aforesaid.

Dated: 9/6, 1957.

/s/ S. KOHN. [15]

#### EXHIBIT No. 1

The real property referred to and covered by the foregoing bid are those certain premises known as 900 W. Bonanza Road, Las Vegas, Clark County, Nevada, and more particularly described as follows, to wit:

“That portion of the Northeast Quarter (NE  $\frac{1}{4}$ ) of the Southeast Quarter (SE  $\frac{1}{4}$ ) of Section 28, Township 20 South, Range 61 East, M.D.B. & M., Described as follows:

Commencing at the Southeast corner of the Northeast Quarter (NE  $\frac{1}{4}$ ) of the Southeast Quarter (SE  $\frac{1}{4}$ ) of Section 28; thence north  $2^{\circ} 50'40''$  East a distance of 50.09 feet to a point; thence South  $89^{\circ} 18'00''$  West along the North line of Bonanza Road a distance of 363.86 feet to the true point of beginning; thence continuing South  $89^{\circ} 18'00''$  West a distance of 533.00 feet to the South-



east corner of that certain parcel of land conveyed by Edna Shulman to Alfred R. Child et ux by deed recorded January 19, 1955, as Document No. 32228, Clark County, Nevada records; thence North  $1^{\circ} 24' 00''$  East a distance of 153.49 feet to a point; thence north  $43^{\circ} 36' 30''$  West a distance of 48.03 feet to a point; thence North  $1^{\circ} 24' 00''$  East a distance of 146.30 feet to the Northeast corner of said conveyed parcel; thence North  $89^{\circ} 18'$  East a distance of 926.99 feet to a point; thence South  $1^{\circ} 24' 00''$  West a distance of 194.78 feet more or less to a Southeast corner of that certain parcel of land conveyed by J. A. Haggard et ux to Will Max Schwartz by deed recorded April 5, 1954, as Document No. 7190, Clark County, Nevada records; thence South  $89^{\circ} 18'$  West a distance of 360.00 feet to an inverted corner of the last mentioned conveyed parcel; thence South  $1^{\circ} 24' 00''$  West a distance of 140.09 feet to the true point of beginning. [16]

[Stamped]: Received and Filed Sept. 6, 1957.  
John C. Mowbray, Referee in Bankruptcy.

[Endorsed]: Filed October 19, 1957.

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[Title of District Court and Causes.]

### ORDER

(1) Granting Motion of LeRoy Investment Co., Inc., a Corporation, and Rosehedge Corporation, a Corporation, for Leave to Proceed With Sale Under Pledge Sale, etc.,

(2) Overruling and Denying the Objections of Trustee to Said Motion;

(3) Upholding the Validity of the Pledges, and the Liens Thereof, of LeRoy Investment Co., Inc. and Rosehedge Corporation;

(4) Upholding the Validity and Lien of the Pledged Property (i.e.) Promissory Note Dated July 9, 1954, and Deed of Trust of Same Date, and Recorded as Document No. 14830 on July 12, 1954, in Book 15, Official Records, of Clark County, Nevada; [17]

(5) And Other Relief.

The Motion of LeRoy Investment Co., Inc., a corporation, and Rosehedge Corporation, a corporation, For Leave to Proceed with Sale Under Pledge Sale and Sale Under Power of Sale Contained in Deed of Trust, and the Objections thereto, of the Receiver, (and now Trustee) Harry E. Miller, came on regularly to be heard before the Honorable John C. Mowbray, Referee in Bankruptcy, on the 12th day of March, 1956, at the Courthouse in Las Vegas, Nevada: LeRoy Investment Co., Inc., a corporation, and Rosehedge Corporation, a corporation, appearing by their counsel, Charles J. Katz, Esquire, William R. Ruymann, Esquire, and Samuel W. Blum, Esquire, and the Receiver (and now Trustee), Harry F. Miller, appearing in person and by his counsel, Messrs. Morse, Graves and Compton, and Messrs. Quittner and Stutman, by Harold Horse, Esquire, and Francis F. Quittner, Esquire; and also appearing at said proceeding

were Morton Galane, Esquire, appearing for the Creditors Committee; John S. Halley, Esquire, appearing for the Debtors, and later Bankrupts, Messrs. Foley and Foley, by Tom A. Foley, Esquire, appearing in association with John S. Halley, Esquire, for Debtors and later Bankrupts, and Max Fink, Esquire, appearing for Jack Silverman, a holder of an encumbrance upon the property herein involved, and the trial upon the said Motion and Objections having proceeded on said date, and thereafter, having been continued for further hearing and trial, from time to time, and having been tried on the various days as designated by the Court, until the trial of said matters was fully completed; and evidence, both oral and documentary, having been offered and introduced by, and on behalf of, the Moving Parties, and the Objector thereto, and the matter having been fully argued by the attorneys for the Moving Parties and the Objector, and the said Motion and the Objections thereto having been submitted to and by the Court for deliberation [18] and decision; and it further appearing that heretofore, an Order of Adjudication was duly made and entered herein in each of the above entitled proceedings; and that pending determination of the aforesaid Motion and Objections, the Court, on or about the 6th day of July, 1956, made and entered its "Order for Sale of Property and Order Authorizing Sale of Property Free and Clear of Liens", providing, among other things, for the sale of the real property hereinafter described, and that the said liens and lien rights of

the various lien claimants, including the liens and lien rights claimed, held, possessed, asserted and owned by LeRoy Investment Co., Inc., a corporation, and Rosehedge Corporation, a corporation, be transferred to the proceeds derived from such sale, or the sales, in the amounts, order and priority, and with the same rights, benefits and privileges as then claimed, owned, possessed and asserted by LeRoy Investment Co., Inc., a corporation, and Rosehedge Corporation, a corporation, and each of them, subject, however, to the terms and provisions of a certain Stipulation dated June 19, 1956 between the Trustee and LeRoy Investment Co., Inc., a corporation, and Rosehedge Corporation, a corporation, and which Stipulation was made a part of the aforesaid Order, and provided, among other things, that said sale, or sales, to be made would be without prejudice to the rights, claims, liens and security asserted, claimed, held or possessed by LeRoy Investment Co., Inc., a corporation, and Rosehedge corporation, a corporation, and each of them, or to any of the objections or defenses claimed or asserted by the Receiver or Trustee to the aforesaid Motion, and further provided that the Court should nevertheless hear and determine the aforesaid Motion and the Objections thereto; and written Findings of Fact and Conclusions of Law having been duly waived herein by the parties hereto by stipulation made in open Court, and entered on the minutes; the [19] Court now makes its Order determining the aforesaid Motion and Objections thereto as follows:

Now, Therefore, Good Cause Appearing, It Is Hereby Ordered, Adjudged and Decreed, As Follows:

1. That the Motion of LeRoy Investment Co., Inc., a corporation, and Rosehedge Corporation, a corporation, For Leave to Proceed with Sale Under Pledge Sale and Sale Under Power of Sale Contained in Deed of Trust, be, and the same is hereby granted.

2. That the Objections of the Receiver and Trustee, Harry E. Miller, to the aforementioned Motion of LeRoy Investment Co., Inc., a corporation, and Rosehedge Corporation, a corporation, be, and they are, and each of them is hereby overruled, and said Objections are, and each of them is hereby denied.

3. That LeRoy Investment Co., Inc., a corporation, is now the actual and lawful owner and holder of a certain promissory note dated April 27, 1955 and signed and executed by Louis Rubin and Alexander Bisno in the principal sum of \$250,000.00, payable on or before August 27, 1955 and bearing interest at the rate of  $11\frac{1}{2}\%$  per annum; and there is now due, owing and unpaid upon the said promissory note to Leroy Investment Co., Inc. the following sums, to wit:

For the account of the principal on said note—  
\$225,000.00.

For interest on said note at the rate of 6% per annum from August 8, 1955 to date hereof—  
\$28,087.50.

For attorney fees for attorneys for LeRoy Invest-



ment Co., Inc. which is hereby allowed by the Court in the sum of—\$15,750.00.

For LeRoy Investment Co., Inc.'s costs and expenses laid out, incurred and expended [20] by it for the preservation or protection of the real property, and for costs and disbursements incurred herein, which is hereby allowed by the Court in the sum of—\$3,885.00.

Making in all a total sum of—\$272,722.50.

and that the aforesaid total sum shall bear interest at the rate of 6% per annum from date hereof, until paid.

That the aforesaid sums are, and each of them is, secured by a valid first pledge of certain personal property, hereinafter described, pledged and delivered by Louis Rubin and Alexander Bisno, the then owners and holders of said personal property, to LeRoy Investment Co., Inc., a corporation, on the 29th day of April, 1955, to secure, and as security for the aforementioned promissory note, and all sums payable thereunder, and under that certain assignment and pledge agreement executed by Louis Rubin and Alexander Bisno, and duly recorded on the 29th day of April, 1955, as Document No. 45180, in Book 53 of Official Records in the Office of the County Recorder, Clark County, Nevada; that the aforesaid pledge is valid, subsisting, and enforceable, and constitutes a valid, subsisting and enforceable pledge of, and a first lien upon the following personal property, to wit: (a) That certain prom-



issory note, dated July 9, 1954, executed by Edna Shulman, as maker, and payable to Bisno & Bisno, Inc., or order, in the principal sum of \$600,000.00, with interest at the rate of 6% per annum from December 1, 1954 on unpaid principal, payable monthly; and principal payable in installments of \$10,000.00, or more, on the 1st day of each consecutive month, commencing on the 1st day of June, 1955, and continuing until said principal and interest has been paid; and (b) That certain deed of trust dated [21] July 9, 1954 and executed by Edna Shulman, a single woman, as Trustor, to the Pioneer Title Insurance and Trust Company, a California corporation, and qualified to do business in the State of Nevada, as Trustee, and to Bisno & Bisno, Inc., a Nevada corporation, Beneficiary, and recorded as Document No. 14830 on July 12, 1954 in Book No. 15 of the Official Records in the Office of the County Recorder of Clark County, Nevada, and covering the real property hereinafter described. Said deed of trust was given as security for and to secure the payment and performance of the afore-said \$600,000.00 promissory note. The Court adjudges that the balance owing and unpaid upon said \$600,000.00 note and trust is the sum of the amounts herein adjudged to be due and owing to LeRoy Investment Co. Inc. and to Rosehedge Corporation. That the said LeRoy Investment Co., Inc., a corporation, is now the lawful pledgee and pledge-holder of the said \$600,000.00 promissory note and deed of trust securing the same and now is holding the possession of the same, and each of them, as

pledgee. That the said pledge to LeRoy Investment Co., Inc., a corporation, and the lien thereof are, and each of them is valid, subsisting, and binding upon and enforceable against the Receiver and Trustee herein, and the above entitled bankrupt estates.

4. That Rosehedge Corporation, a corporation, is now the actual and lawful owner and holder of a certain promissory note dated May 24, 1955, and executed by Moulin Rouge, a Partnership, by Louis Rubin and Alexander Bisno, individually, in the principal sum of \$195,000.00 and bearing interest at the rate of 6% per annum; principal and interest payable in installments of \$7500.00, or more, on Wednesday of each week, commencing June 1, 1955, and continuing until the full amount of principal and interest has been paid; that there is now due, owing and unpaid to Rosehedge Corporation, a corporation, upon the aforesaid promissory note the following sums:

For the account of principal on said note—  
\$126,928.66.

For interest on said note at the rate of 6% per annum from August 27, 1955 to date hereof—  
\$15,442.99. [22]

For attorney fees for attorneys for Rosehedge Corporation, a corporation, which is hereby allowed by the Court in the sum of —\$8,890.00.

For Rosehedge Corporation's costs and expenses laid out, incurred and expended by it for the preservation or protection of the real property

and for costs and disbursements incurred herein, which is hereby allowed by the Court in sum of—\$3585.00.

Making in all a total sum of—\$154,846.65.

and that the aforesaid total sum shall bear interest at the rate of 6% per annum from date hereof until paid.

That the aforesaid sums are, and each of them is secured by a valid pledge of certain personal property, hereinafter described, pledged and delivered by Louis Rubin and Alexander Bisno, the then owners and holders of said personal property, to Rosehedge Corporation, a corporation, subject to the prior pledge of LeRoy Investment Co., Inc. as hereinbefore set forth, to secure, and as security for the payment of the aforementioned promissory note; and all sums payable thereunder, and under the certain assignment and pledge agreement executed by Alexander Bisno and Louis Rubin, the owners and holders of the personal property hereinafter described, and duly recorded on the 25th day of May, 1955 as Document No. 47538 in Book No. 56 of Official Records in the Office of the County Recorder of Clark County, Nevada; that at said time of the creation of the aforesaid pledge the said pledged personal property was then in the possession of LeRoy Investment Co., Inc., a corporation, as pledge-holder under its pledge as hereinbefore set forth, and no further, or other delivery of possession of the said pledged personal property was required to create a valid pledge in favor [23] of

Rosehedge Corporation, a corporation, as aforesaid, and that immediately following the pledge to Rosehedge Corporation, a corporation, written notice of said pledge was given to LeRoy Investment Co., Inc., a corporation, by Rosehedge Corporation, a corporation; that the aforesaid pledge to Rosehedge Corporation, a corporation, is a valid, subsisting and enforceable pledge, and constitutes a valid and enforceable pledge of, and a lien upon, said personal property hereinafter mentioned, which pledge and lien is subject and junior only to the Pledge given to LeRoy Investment Co., Inc., a corporation, as hereinbefore mentioned and set forth in the preceding paragraph No. 3 hereof; that said pledged personal property consists of the following personal property, to wit: (a) That certain promissory note dated July 9, 1954, executed by Edna Shulman, as maker, and payable to Bisno & Bisno, Inc., or order, in the principal sum of \$600,000.00, with interest at the rate of 6% per annum, from December 1, 1954, on unpaid principal, payable monthly; and principal payable in installments of \$10,000.00, or more, on the 1st day of each consecutive month commencing on the 1st day of June, 1956, and continuing until said principal and interest has been paid; and (b) that certain deed of trust, dated July 9, 1954, and executed by Edna Shulman, a single woman, as Trustor, to the Pioneer Title Insurance and Trust Company, a California corporation, and qualified to do business in the State of Nevada, as Trustee, and to Bisno & Bisno, Inc., a Nevada corporation, Beneficiary, recorded as Document No.



14830 on July 12, 1954 in Book No. 15 of the Official Records in the Office of the County Recorder, Clark County, Nevada, and covering the real property hereinafter described. That the said Rosehedge Corporation, a corporation, is the lawful pledgee and pledge-holder of the said \$600,000.00 promissory note and deed of trust securing the same, subject only to the prior and superior rights and possession of the same, by [24] LeRoy Investment Co., Inc., a corporation, as pledgee, as hereinbefore set forth. That the possession of LeRoy Investment Co., Inc., a corporation, as pledgee, of the aforesaid promissory note and deed of trust, also constitutes the possession of the said promissory note and deed of trust for and on behalf of Rosehedge Corporation, a corporation, as subsequent pledgee of the said promissory note and deed of trust, subject and subordinate only to the prior pledge, rights, and possession of LeRoy Investment Co., Inc., a corporation, as hereinbefore set forth. That the said pledge to Rosehedge Corporation, a corporation, and the lien thereof, and each of them is valid, subsisting and binding upon and enforceable against the receiver and Trustee herein, and the above entitled bankrupt estates.

5. That the aforementioned promissory note dated July 9, 1954, and executed by Edna Shulman, as maker, to Bisno & Bisno, Inc., or order, is a valid, subsisting, binding and enforceable promissory note, supported by adequate and legal consideration, and without any infirmities or defenses thereto, and is binding upon and enforceable

against the Receiver and Trustee herein, and the above entitled bankrupt estates; that the entire amount of principal of said promissory note, and the interest thereon, in accordance with the terms and tenor of said promissory note, is now due, owing and unpaid; that the said promissory note is secured by that certain deed of trust, executed by Edna Shulman, a single woman, as Trustor, to Pioneer Title Insurance and Trust Company, a California corporation, qualified to do business in the State of Nevada, as Trustee, and to Bisno & Bisno, Inc., a Nevada corporation, as Beneficiary, and covering the real property hereinafter described, and was recorded on July 12, 1954, as Document No. 14830, in Book No. 15 of Official Records, in the Office of the County Recorder of Clark County, Nevada; that said Deed of trust is a valid, subsisting, binding and enforceable [25] deed of trust, and said deed of trust, and the lien thereof, are, and each is binding upon and enforceable against the Receiver and Trustee herein, the above entitled bankrupt estates, and the real property hereinafter described; that said deed of trust created, and creates, and now constitutes a valid, subsisting and enforceable first lien upon the said real property hereinafter described, and said real property is subject to and charged and burdened with, said first lien and the aforesaid deed of trust, in the amounts, and in accordance with the terms and tenor of the aforementioned promissory note of \$600,000.00, and the terms and provisions of the said deed of trust.

6. That the liens and lien rights, of LeRoy Investment Co., Inc., a corporation, and Rosehedge



Corporation, a corporation, and the amounts adjudicated to be due, owing, and unpaid to LeRoy Investment Co., Inc., a corporation, and to Rosehedge Corporation, a corporation, as hereinbefore set forth, shall be and are subject only to the following priorities, and none others:

(a) State, County and City real estate taxes now due, owing, and unpaid upon the hereinafter described real property, or which constitute a lien upon the real property hereinafter described, but which may not yet be due and payable.

(b) In the event, and upon the condition that the real property hereinafter described is sold by this Court pursuant to and as provided by its Order of Sale, now on file herein and dated July 6, 1956, and the liens and lien rights of Leroy Investment Co., Inc., a corporation, and Rosehedge Corporation, a corporation, are transferred to the net proceeds of said sale, then the liens and lien rights of LeRoy Investment Co., Inc., a corporation, and Rosehedge Corporation, a corporation, shall be subject [26] to the additional following priority, to wit: The actual and necessary costs and expenses of preservation of the estate herein, remaining unpaid, including the actual and necessary costs and expenses of the sale of the real property hereinafter described, and the costs of administration herein, as fixed by the Court, but in an amount not to exceed the sum of \$116,000.00 as the combined total of all of the foregoing. But if the said real property is not sold by this Court, as aforesaid, then the foregoing priority in an amount not to exceed the sum of \$116,000.00, as provided by the foregoing provi-

sions of this subdivision (b) of this paragraph 6 of this Order shall not be applicable and shall not apply, and in such event, only the priority as fixed and determined by sub-paragraph (a) hereof, and the priority as fixed and determined by the Order of Sale, on file herein, and dated July 6, 1956, and none others, shall apply, and shall be applicable herein, to wit: Only the actual costs of insurance premiums, and the actual and necessary costs and expenses of preservation of these estates incurred since the filing of the petition herein, including the actual and necessary costs and expenses incurred for and in connection with the sale of the real property hereinafter described, shall be entitled to priority over, and shall be prior to the liens, and lien rights of LeRoy Investment Co., Inc., a corporation, and Rosehedge Corporation, a corporation, and to the amounts adjudicated to be due, owing and unpaid to LeRoy Investment Co., Inc., a corporation, and Rosehedge [27] Corporation, a corporation, as hereinbefore set forth, and all costs of administration, and all fees, and all other costs, charges, and burdens of the above entitled bankrupt estates shall be, and are subsequent and inferior to the liens and lien rights of LeRoy Investment Co., Inc., a corporation, and Rosehedge Corporation, a corporation, and to the amounts adjudicated to be due, owing and unpaid to LeRoy Investment Co., Inc., a corporation, and Rosehedge Corporation, a corporation, and each of them, as hereinbefore set forth.

7. That the real property hereinafter described

shall first be offered for sale by this Court pursuant to, and in accordance with, and as provided by that certain Order of Sale dated July 6, 1956, and if said real property be so sold, then the liens, claims and rights of LeRoy Investment Co., Inc., a corporation, and Rosehedge Corporation, a corporation, herein determined, shall be transferred to the net proceeds of said sale, and LeRoy Investment Co., Inc., a corporation, and Rosehedge Corporation, a corporation, shall be paid in full the sums herein determined to be due, owing and unpaid to them, and each of them; but if the said real property be not so sold by this Court, within . . . . days hereof, then LeRoy Investment Co., Inc. and Rosehedge Corporation be, and they are, and each of them is, hereby authorized to proceed with the sale of said pledged property, and with the sale of said real property under the Power of Sale contained in the aforementioned deed of trust, all as provided by, and in accordance with the terms and provisions of said Pledge and Pledge Agreement, the Power of Sale contained in the deed of trust hereinbefore mentioned, and the various provisions of law applicable thereto. [28]

8. That the real property referred to herein, and affected hereby, and subject to the lien of the deed of trust hereinbefore mentioned, is that certain real property situate in the City of Las Vegas, County of Clark, State of Nevada, covering the premises known as:

“That portion of the Northeast Quarter (NE  $\frac{1}{4}$ ) of the Southeast Quarter (SE  $\frac{1}{4}$ ) of Section 28,

Township 20 South, Range 61 East, M.D.B. & M., described as follows:

Commencing at the Southeast corner of the Northeast Quarter (NE  $\frac{1}{4}$ ) of the Southeast Quarter (SE  $\frac{1}{4}$ ) of Section 28; thence north  $2^{\circ} 50' 40''$  East a distance of 50.09 feet to a point; thence South  $89^{\circ} 18' 00''$  West along the North line of Bonanza Road a distance of 363.86 feet to the true point of beginning; thence continuing South  $89^{\circ} 18' 00''$  West a distance of 533.00 feet to the Southeast corner of that certain parcel of land conveyed by Edna Shulman to Alfred R. Child et ux by deed recorded January 19, 1955, as Document No. 32228, Clark County, Nevada records; thence North  $1^{\circ} 24' 00''$  East a distance of 153.49 feet to a point; thence north  $43^{\circ} 36' 30''$  West a distance of 48.03 feet to a point; thence North  $1^{\circ} 24' 00''$  East a distance of 146.30 feet to the Northeast corner of said conveyed parcel; thence North  $89^{\circ} 18'$  East a distance of 926.99 feet to a point; thence South  $1^{\circ} 24' 00''$  West a distance of 194.78 feet more or less to a Southeast corner of that certain parcel of land conveyed by J. A. Haggard et ux to Will Max Schwartz by deed recorded April 5, 1954, as Document No. 7190, Clark County, Nevada records; [29] thence South  $89^{\circ} 18'$  West a distance of 360.00 feet to an inverted corner of the last mentioned conveyed parcel; thence South  $1^{\circ} 24' 00''$  West a distance of 140.09 feet to the true point of beginning;''

Dated this 6th day of September, 1957.

/s/ JOHN C. MOWBRAY,

Referee in Bankruptcy.



We, and each of us, do hereby waive written Findings of Fact and Conclusions of Law in connection with the foregoing proceeding, and do hereby waive any and all rights of review, of the foregoing Order, and any and all rights of appeal therefrom, and do hereby consent to the entry of the aforesaid Order without further notice or motion.

HARRY E. MILLER,

Trustee and Receiver,

By MORSE, GRAVES AND

COMPTON, and

QUITTNER AND STUTMAN,

/s/ By FRANCIS F. QUITTNER,

Attorneys for Receiver and Trustee.

LEROY INVESTMENT CO., INC.,

a corporation, and

ROSEHEDGE CORPORATION,

a corporation,

By CHARLES J. KATZ, WILLIAM

RUYMANN and SAMUEL W.

BLUM,

/s/ By CHARLES J. KATZ,

Attorneys for LeRoy Investment Co., Inc., a corporation, and Rosehedge Corporation, a corporation. [30]

[Stamped]: Received and Filed Sept. 6, 1957.  
John C. Mowbray, Referee in Bankruptcy.

[Endorsed]: Filed October 19, 1957.

[Title of District Court and Causes.]

PETITION FOR REVIEW OF REFEREE'S  
ORDER DATED SEPTEMBER 6, 1957 AND  
PETITION FOR SUSPENSION OF EXE-  
CUTION OR ENFORCEMENT OF SAID  
ORDER

Alexander Bisno hereby represents:

1. That he is one of petitioners herein.
2. That he is a general partner in the Moulin Rouge, a limited partnership.
3. That petitioner Millie Sterett is a creditor of said limited partnership in the amount of \$35,000.00 secured by a chattel mortgage recorded on July 13, 1955 in Book 61, No. 51829 of official records of Clark County, Nevada, which chattel mortgage describes and lists the personal property included therein.
4. That petitioner Bernice Gurewitz is a general creditor of said limited partnership in the amount of \$7,000.00 and has filed her Proof of Claim in said matter with the above entitled Court.
5. That on September 6, 1957, the Honorable John C. [31] Mowbray, Referee in Bankruptcy, signed an order entitled as follows:

“Order

(1) Granting Motion of Leroy Investment Co., Inc., a Corporation, and Rosehedge Corporation, a Corporation, For Leave to Proceed With Sale Under Pledge Sale, etc.,



(2) Overruling and Denying the Objections of Trustee to Said Motion;

(3) Upholding the Validity of the Pledges, and the Liens Thereof, of LeRoy Investment Co., Inc. and Rosehedge Corporation;

(4) Upholding the Validity and Lien of the Pledged Property (i.e.) Promissory Note Dated July 9, 1954, and Deed of Trust of Same Date, and Recorded As Document No. 14830 on July 12, 1954, in Book 15, Official Records, of Clark County, Nevada;

(5) And Other Relief."

6. That petitioners' interest in said bankruptcy differ. That petitioners join in this Petition for Review in which petition there is no conflict and that petitioners represent to the Court that if at some later time a conflict of interest should arise between petitioners, separate counsel shall be obtained for such petitioners as might conflict with each other.

7. That petitioner alleges that the following are the grounds for review of said order and reversal thereof.

a. That the evidence is insufficient to justify said order in the following particulars.

1. The assignment, pledge, deed of trust and liens referred to in said order are not and never were valid, legal, binding, subsisting or enforceable.

2. That LeRoy Investment Company, Inc. and

Rosehedge Corporation are at most general creditors of said bankrupt.

3. That the sums set forth to be due LeRoy Investment Company, Inc. are not secured by a valid first pledge of personal property. [32]

4. That the personal property alleged to be security for said first pledge is not described in said pledge or in said order.

5. That said deed of trust in favor of LeRoy Investment Company, Inc. is not valid, subsisting, binding and enforceable. That the amount of principal allegedly due under the promissory note to Rosehedge Corporation is erroneously stated. That the amounts of said promissory note in favor of Rosehedge Corporation are not secured by a valid pledge of personal property.

6. That there was no delivery or pledge by Louis Rubin and Alexander Bisno of any personal property to LeRoy Investment Company, Inc. or Rosehedge Corporation.

7. That said Rosehedge Corporation is not the lawful pledgee and pledge holder of said \$600,000.00 promissory note and deed of trust securing the same.

8. That there are prior and superior rights in possession of the said personal property other than asserted by LeRoy Investment Company, Inc.

9. That the described promissory note dated July 9, 1954 issued by Edna Shulman is not valid,

subsisting, binding, enforceable nor supported by adequate or legal consideration.

10. That the deed of trust securing said Shulman promissory note is not valid, subsisting, binding or enforceable and that said deed of trust does not constitute a valid secured first lien upon the real property described in said order.

11. That the rights of LeRoy Investment Company, Inc. and Rosehedge Corporation are subject to other priorities including that of petitioner Millie Sterett and that said corporations are general creditors of said bankrupt.

12. That neither LeRoy Investment Company, Inc. nor Rosehedge Corporation were bona fide purchasers of said promissory notes issued by Edna Shulman. That neither of said corporations [33] took said promissory notes in good faith or for value. That both of said corporations had actual notice of the infirmities in said note or knowledge of such facts that their actions in taking such note amounted to bad faith.

b. That petitioners are informed and believe and thereupon allege that there was a compromise between the trustee in bankruptcy and LeRoy Investment Company, Inc. and Rosehedge Corporation, that this compromise was the result of prior negotiations, that said compromise was reached is evidenced by the fact that said order of 14 pages was prepared and ready for signature by the Referee in Bankruptcy on September 6, 1957, the date of the hearing set by said Referee, and that said adverse

parties waived written findings of fact and conclusions of law, waived any and all rights of review and appeal from said order and consented to the entry of said order without further notice or motion. That neither said trustee nor the attorney for said Rosehedge Corporation and LeRoy Investment Company, Inc. gave notice to any creditors of said compromise and that said compromise and order based thereon is void for failure to give due notice to creditors as required by the Bankruptcy Act.

c. That said chattel mortgage in favor of Millie Sterett is prior in claim, validity and interest to any of the liens asserted by LeRoy Investment Company, Inc. and Rosehedge Corporation.

d. That the effect of said order is to completely wipe out any and all claims of petitioner Bernice Gurewitz and any and all claims of all other general creditors, totalling in excess of \$1,000,000.00.

e. That petitioner Alexander Bisno, was the original petitioner in the voluntary petition under Chapter XI of the Bankruptcy Act on behalf of Moulin Rouge, a limited partnership, and under this erroneous order said petitioner will face a non-dischargeable [34] indebtedness and income tax lien in the amount of approximately \$200,000.00 to the Department of Internal Revenue.

f. That petitioners are informed and believe and thereupon allege that numerous creditors of the bankrupt are still negotiating with the Atomic Energy Commission in an effort to obtain a lease on the Moulin Rouge property involved in the Ref-

eree's order and if said lease is consummated in the near future, petitioners are informed and believe that it will result in payment of said income tax lien of petitioner Alexander Bisno, satisfaction of the secured indebtedness of Millie Sterett, and partial payment of the claim of petitioner Bernice Gurewitz and other general creditors.

g. That there were irregularities in proceedings of the Referee by which petitioners were prevented from having a fair trial.

h. That there was accident and surprise, which ordinary prudence could not have guarded against.

i. That there is newly discovered evidence which petitioners could not with reasonable diligence have discovered and produced at the hearing in this matter.

j. That there was error in law occurring at the hearing and excepted to by the parties injured by said order.

8. That petitioners pray that said order of September 6, 1957 be suspended and stayed pending ruling upon this Petition for Review and pending any appeals which may be taken in this matter.

9. That petitioners were unable to obtain a copy of said order until September 11, 1957 and petitioners immediately thereafter presented a copy of said order to their attorneys requesting the opinion of said attorneys as to the validity thereof. That because of the lack of sufficient time to properly examine said order and to prepare a Petition for



Review, petitioners allege that this Petition for Review may require amendment in order to fully and [35] more properly set forth petitioners' grounds for review of said order of said Referee and petitioners hereby request leave of Court in which to file an amended Petition for Review if for any reason this Petition should be defective or require amendment.

10. That petitioners request that the District Court consider upon its review all of the pleadings, papers, documents on file herein and all of the evidence, documentary and oral, and transcripts of testimony herein.

Wherefore, petitioners pray that said order of September 6, 1957 be reversed and that execution or enforcement of said order be stayed pending the ruling on this Petition for Review and pending any appeals to be taken in said matter.

/s/ ALEXANDER BISNO.

ARTHUR N. GREENBERG AND  
ROBERT COHEN,

/s/ By ARTHUR N. GREENBERG,  
Attorneys for Petitioners. [36]

Duly Verified.

Affidavit of Service by Mail Attached. [37]

[Stamped]: Received and Filed Sep. 17, 1957.  
John C. Mowbray, Referee in Bankruptcy.

[Endorsed]: Filed October 19, 1957.

[Title of District Court and Causes.]

STIPULATION re Sale of Real Property free and clear of liens, the lien and lien rights being transferred to sale proceeds, etc. (LEROY and ROSEHEDGE)

Harry E. Miller, the Receiver and Trustee in the above entitled proceedings, hereinafter designated "Trustee", and LeRoy Investment Co., Inc., a corporation, hereinafter designated "LeRoy", and Rosehedge Corporation, a corporation, hereinafter designated "Rosehedge", by and through their respective counsel, hereby stipulate as follows:

Whereas, heretofore and during February, 1956, LeRoy and Rosehedge filed their Motion For Leave to Proceed With Sale Under Pledge Sale and Sale Under Power of Sale Contained in Deed of Trust, reference to which motion is hereby made for further particulars; and

Whereas, the Receiver, Harry E. Miller, by and through his counsel, filed a written answer with written objections to said motion upon certain specified grounds, reference to which answer and objections is hereby made for further particulars; and

Whereas, hearings have been held and conducted upon said motion, and answer and objections thereto, before the Honorable John C. Mowbray, Referee in Bankruptcy, and that said matters are now pending and undetermined; and

Whereas, the parties desire that the real property hereinafter described, being the property cov-

ered by and included within the aforementioned Edna Shulman deed of trust, be sold as expeditiously as is reasonably possible by the Trustee, at public sale, through the above entitled Court, free and clear of all liens, upon the terms and conditions hereinafter set forth:

Now, Therefore, it is hereby stipulated and agreed by and between the aforementioned parties, by and through their respective counsel as follows:

1. That pending the final determination of the aforementioned motion and objections, the real property hereinafter described may be sold by the Trustee herein, at public auction, under the supervision of, and subject to the approval or confirmation by the above entitled Court, free and clear of and from the pledge liens claimed, held, possessed, asserted and owned by LeRoy and Rosehedge, and free and clear of and from the lien imposed and created by the aforementioned Shulman deed of trust upon the real property hereinafter described, upon the following terms and conditions:

(a) That such sale shall be without prejudice to the rights, claims, liens and security, asserted, claimed, held or possessed by LeRoy and Rosehedge, and each of them, and likewise shall be without prejudice to the objections and defenses now interposed by the Receiver and or Trustee as hereinbefore mentioned; and that the Court shall hear and determine the aforementioned motion of LeRoy and Rosehedge, and the objections thereto interposed by the Receiver;

(b) That said property shall be sold by the Trus-

tee as expeditiously as is reasonably possible and said sale be confirmed by the Court not later than ninety (90) days from and after June 20, 1956, unless extended by the Court for good cause shown;

(c) That the lien and lien rights of LeRoy and Rosehedge now claimed, owned, held or asserted by them, and each of them, shall be transferred to the proceeds derived from such sale or sales by Trustee, in the amounts, order and priority, and with the same rights, benefits and privileges, as now claimed, owned, possessed, held and asserted by LeRoy and Rosehedge, and each of them; that only the actual cost of insurance premium, and the actual and necessary costs and expenses of preservation of the estate, incurred since the filing of the petition herein, including the actual and necessary costs and expenses of the sale of the real property hereinafter set forth shall be entitled to priority over, and shall be prior to the liens asserted or possessed by LeRoy and Rosehedge, and that all costs of administration, and all fees, and all other costs, charges and burdens herein shall be and are subsequent and inferior to the liens asserted or possessed by LeRoy and Rosehedge, and neither the liens asserted by LeRoy and Rosehedge, nor the funds or proceeds derived from the sale of the real property hereinafter set forth shall be burdened or charged therewith, except only such funds or proceeds as shall remain after the liens asserted by LeRoy and Rosehedge, and each of them, shall have been paid or satisfied in full, or otherwise finally determined as herein provided;

(d) That LeRoy and Rosehedge, and each of them, shall be notified in writing by Trustee, at least ten (10) days before the holding of any sale, of the time and place of each, every and all of such sales to be held of the real property hereinafter described, or any part or portion thereof, and likewise shall be notified in writing by Trustee, at least ten (10) days before the date set for any hearing of any and all petitions or applications for the confirmation, or approval, of any and all sales made or held by the Trustee, of the said real property or any part or portion thereof;

(e) That at any such sale or sales of said real property hereinafter described, or any part thereof, the said LeRoy and Rosehedge, jointly or severally may be a bidder or bidders thereat, and jointly or severally may become purchaser or purchasers at such sale or sales. In bidding at such sale or sales, LeRoy and Rosehedge, jointly or severally, may, and shall be entitled to use on account of any and all bids made by them, or either of them, the amount of their respective indebtedness as claimed by them at such time, in whole, or in part;

(f) That in the event LeRoy and Rosehedge, jointly or severally, become purchaser or purchasers at such sale or sales of the real property hereinafter described, or any part thereof, and such sale or sales are confirmed, or approved, by the above entitled Court, LeRoy and Rosehedge, and each of them, may, and shall be entitled to use and apply the amount of their respective indebtedness as claimed by them at the time of such purchase, in whole, or in part, including the principal and



interest of said indebtedness, and all sums paid out, or incurred by them, or either of them, for the protection or preservation of the said real property, and attorney fees as provided by the respective promissory notes, and as approved by this Court, as a credit upon, and as payment upon the said purchase price of the property purchased;

(g) That in the event LeRoy and Rosehedge, jointly or severally, shall be the purchaser at such sale or sales, a trustee's deed to, and possession of said real property so purchased, shall be delivered to such purchaser and such purchaser, immediately after confirmation or approval of said sale, or sales by the Court, shall be entitled to the full use, occupancy and enjoyment of said real property, so purchased, free and clear of all claims of every kind thereagainst on the part of the Trustee, excepting that the Trustee shall be entitled to receive in cash from the said LeRoy and/or Rosehedge, a sum equal to the actual insurance premiums incurred by Trustee, during administration, and a sum equal to the amount of the actual and necessary costs and expenses of preserving the estate, and the actual and necessary costs and expense of sale, as provided and specified under subdivision (c) hereof, and as determined by the Court; and excepting further that said purchaser or purchasers shall not transfer, encumber or convey said property, or any part thereof, pending the final determination of the aforesaid motions of LeRoy and Rosehedge and the objections thereto;

(h) In the event that LeRoy and Rosehedge, jointly or severally, become the purchaser of the

said real property hereinafter described, and it finally shall be determined that the aforesaid motion of LeRoy and Rosehedge shall be granted, and the validity of the liens asserted by LeRoy and Rosehedge are upheld in an amount equal to, or greater than the amount used as a credit on account of the purchase price, then the title of such purchaser shall be absolute, and the said purchaser then may dispose of, or otherwise deal with the property purchased, free and clear of all claims, right, title, interest, estate or lien of the Trustee, and this estate.

(i) In the event that LeRoy and Rosehedge, jointly or severally, become the purchaser of the said real property hereinafter described, and it finally be determined that the motion of LeRoy and Rosehedge be denied, and that the liens asserted by LeRoy and Rosehedge, and each of them, are invalid, and their respective claims and indebtedness shall be allowed only as general claims herein, then LeRoy and Rosehedge, as such purchaser, shall immediately pay that portion of the purchase price for which credit was allowed by virtue of their claims, as herein provided;

(j) In the event of any disputes between the parties hereto as to any of the amounts or sums of money referred to and provided for under the provisions of subdivision (i), as aforesaid, or in the event of any disputes of the parties over or relating to the actual and necessary costs and expenses incurred or expended for the preservation of the estate since the filing of the petition herein and

for insurance incurred or expended by either of the parties hereto or for the actual and necessary costs and expenses of sale referred to and as provided under subdivision (c) hereof, then such dispute or disputes shall be submitted to and determined by this Court, subject to the right of review and appeal by either party;

(k) In the event that neither LeRoy nor Rosehedge shall become the purchaser of the real property hereinafter described, or any part thereof, and such real property shall be sold to some other person or persons, firm or corporation, then, and in that event, the cash received as the purchase price shall be impressed with the respective liens asserted by LeRoy and Rosehedge and their respective lien rights, and such liens and lien rights shall be transferred to and impressed upon such funds in the amount, order and priority as they now claim, possess and assert. In the event the motion of LeRoy and Rosehedge be granted and the validity of the liens asserted by them be upheld by the Referee herein, that then the Trustee shall pay to LeRoy and Rosehedge, out of such funds, the amount of the liens so determined by the Referee. In the event that the Trustee takes a review and appeals from such decision, LeRoy and Rosehedge, as a condition to the receipt of such moneys, shall execute an agreement in writing, to be guaranteed by such individuals as shall be approved by the Court, which agreement and guaranty shall provide that in the event it shall be finally determined that the liens of LeRoy and Rosehedge are totally in-

valid, then LeRoy and Rosehedge shall repay to Trustee all said sums so received by them, and each of them; and in the event that said liens be finally determined to be valid in an amount less than allowed by the Referee and received by LeRoy and Rosehedge, that then LeRoy and Rosehedge shall repay to Trustee the excess of the amounts of money received by them, over the amount of the liens as finally determined.

(l) That notwithstanding anything herein contained to the contrary, the amount of liens and lien rights claimed and asserted by LeRoy and Rosehedge constitute the unpaid principal on the \$250,000.00 promissory note held by LeRoy and the unpaid principal on the \$195,000.00 promissory note held by Rosehedge, together with the unpaid interest on each of said promissory notes, as therein provided, and all sums paid out and incurred by them, or either of them, for the protection and preservation of the real property hereinafter described, and attorney fees, as provided by the aforementioned respective promissory notes, and as approved by this Court.

(m) The real property referred to herein, and affected hereby is that certain real property situate in the City of Las Vegas, County of Clark, State of Nevada, covering the premises known as 900 West Bonanza Road, Las Vegas, Clark County, Nevada, and more particularly described as follows, to-wit:

“That portion of the Northeast Quarter (NE  $\frac{1}{4}$ ) of the Southeast Quarter (SE  $\frac{1}{4}$ ) of Section 28,



Township 20 South, Range 61 East, M.D.B. & M., described as follows:

Commencing at the Southeast corner of the Northeast Quarter (NE  $\frac{1}{4}$ ) of the Southeast Quarter (SE  $\frac{1}{4}$ ) of said Section 28; thence North  $2^{\circ} 50' 40''$  East a distance of 50.09 feet to a point, thence South  $89^{\circ} 18' 66''$  West along the North line of Bonanza Road a distance of 363.86 feet to the true point of beginning; thence continuing South  $89^{\circ} 18' 00''$  West a distance of 533.00 feet to the Southeast corner of that certain parcel of land conveyed by Edna Shulman to Alfred R. Child et ux by deed recorded January 19, 1955, as Document No. 32228, Clark County, Nevada records; thence North  $1^{\circ} 24' 00''$  East, a distance of 153.49 feet to a point; thence North  $43^{\circ} 36' 30''$  West a distance of 48.03 feet to a point; thence North  $1^{\circ} 24' 00''$  East a distance of 146.30 feet to the Northeast corner of the said conveyed parcel; thence North  $89^{\circ} 18'$  East a distance of 926.99 feet to a point; thence South  $1^{\circ} 24' 00''$  West a distance of 194.78 feet more or less to a Southeast corner of that certain parcel of land conveyed by J. A. Haggard et ux to Will Max Schwartz by deed recorded April 5, 1954, as Document No. 7190, Clark County, Nevada records; thence South  $89^{\circ} 18'$  West a distance of 360.00 feet to an inverted corner of the last mentioned conveyed parcel; thence South  $1^{\circ} 24' 00''$  West a distance of 140.09 feet to the true point of beginning."

(n) That all of the terms, covenants and provisions of this stipulation are intended to and shall



inure to the benefit of and be binding upon the parties hereto, and their respective successors and assigns.

Dated this 19th day of June, 1956.

QUITTNER, STUTMAN &  
TREISTER,  
MORSE, GRAVES & COMPTON,  
/s/ By FRANCIS F. QUITTNER,  
Attorneys for Trustee.

CHARLES J. KATZ,  
SAMUEL W. BLUM,  
WILLIAM G. RUYMANN,  
/s/ By SAMUEL W. BLUM,  
Attorneys for LeRoy Investment Co., Inc., and  
Rosehedge Corporation.

Approved, and So Ordered: June 19, 1956.

/s/ JOHN C. MOWBRAY,  
Referee.

[Stamped]: Received and Filed June 19, 1956.  
John C. Mowbray, Referee in Bankruptcy.

[Endorsed]: Filed October 22, 1957.

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[Title of District Court and Causes.]

ORDER CONFIRMING SALE OF PROPERTY  
FREE AND CLEAR OF LIENS, EXCEPT-  
ING CERTAIN SPECIFIED LIENS

At Las Vegas, In Said District, On The 23rd Day  
of September, 1957.

Upon the petition of the Trustee, Harry E. Mil-

ler, verified and filed on the 5th day of June, 1956, for authority to sell the real property hereinafter described, in accordance with the terms of the Bankruptcy Act, and upon due notice of hearing on said petition, under date of June 5, 1956, having been given to all of the creditors of the above named Bankrupts, attorneys, lien holders, lien claimants, and other parties in interest, as provided by law and the provisions of the Bankruptcy Act; and [38] upon the verified petition of the Trustee, Harry E. Miller, filed May 21, 1956, to sell the said real property hereinafter described, free and clear of all liens, and upon a supplemental petition thereto, filed June 5, 1956, and upon due notice of hearing on said petitions, under date of June 5, 1956, having been given to all creditors of the above Bankrupts, attorneys, lien holders, lien claimants and other parties in interest, as provided by law, and the Order of this Court, and a hearing upon and pursuant to the aforesaid notices having come on regularly before the undersigned Referee, in his Courtroom, on the 18th day of June, 1956, and further hearing upon the said notice for authority to Trustee to sell said real property hereinafter described, and the said notice of hearing thereon, then, and thereafter, having been continued by Orders of Court from time to time to September 6, 1957; and it further appearing that on the 6th day of July, 1956, an Order was duly made and filed in the above named Bankrupts' proceedings authorizing the sale of said real property hereinafter described, in accordance with the terms

of the Bankruptcy Act, and further authorizing the sale of said real property hereinafter described free and clear of all liens, and that said Order has become and now is final; and it further appearing that due notice of the sale of said real property was widely and extensively advertised, both locally and nationally throughout the United States of America in well-known and widely circulated newspapers of general circulation, including the following newspapers: the Wall Street Journal, in the San Francisco edition, the Los Angeles edition and the New York edition thereof, the Los Angeles Times, the San Francisco Chronicle, the St. Louis Post-Dispatch, the Dallas News, the Fort Worth Star Telegram, the Louisville Courier Journal, the Cleveland Plain Dealer, the Detroit Free Press, the Chicago Tribune, the Las Vegas Sun, the Review Journal of [39] Las Vegas, and the Henderson and Boulder City News, on numerous occasions and for extended periods of time, and by brochures caused to be prepared, and printed, by the Trustee and sent by said Trustee throughout the entire United States of America to many thousands of prospective bidders, prospective purchasers and other persons interested in bidding upon or purchasing said real property hereinafter described; and that due notice of sale of said real property has been given to the general public and to all of the creditors of the above named Bankrupts, attorneys, lien holders, lien claimants, and to all parties in interest, in the form and manner and for such time as required by law and the Bankruptcy Act; and that

said sale, and notice thereof, was continued by Orders of Court, and by public announcement, from time to time to September 6, 1957, to enable the Trustee to obtain the highest and best bid and offer available for said property; and it further appearing that at said hearing on September 6, 1957, the said real property hereinafter described and certain personal property was offered for sale, at public auction, by the undersigned Referee, in his Courtroom, and that at said time an offer was made in open Court by S. Kohn to purchase the real property hereinafter described, together with the improvements, free and clear of all taxes, liens and encumbrances except as hereinafter specifically set forth, for the sum of \$116,000.00 cash, and that for the same consideration and as a part of the same transaction there was to be conveyed and transferred to the said purchaser, if the successful bidder, by bill of sale, all of the right, title, interest and estate of the Trustee herein in and to all of the furniture, furnishings, gaming equipment of all kinds, and all other tangible personal property pertaining to the business of the Moulin Rouge, but subject, however, to all valid and subsisting conditional sales contracts and chattel mortgages against the said personal property; and that said offer [40] further provided that the proposed sale was to be consummated through an escrow to be opened upon the acceptance of the said bid by the Court; that the purchase price was to be paid through said escrow; that the aforesaid purchaser, if the successful bidder, shall obtain a policy of



title insurance guaranteeing the title to the hereinafter described real property to be free and clear, except as hereinafter specifically provided; that as a part of and in connection with said offer, the said bidder further agreed to pay all of the costs of the escrow, including the sewer assessment, the costs of the title policy to be procured, and to pro rate the insurance and utilities; and that the real property referred to and covered by the said bid are those certain premises located in the County of Clark, State of Nevada, and hereinafter more particularly described; and the Court having heard and received other bids by and on behalf of other bidders; and it further appearing that the aforesaid bid of S. Kohn was the highest and best bid made at said sale and the highest and best bid which could and can be obtained for said property; and after hearing the attorneys for the Trustee, and the attorneys for the aforesaid bidder, in support of the said bid, and the Chairman of the Creditors' Committee, and the attorney for another bidder, and other parties present at the time of said sale, in connection with the said offers and said sale, the Court then accepted the bid of S. Kohn, as made, and upon all of the evidence, and it further appearing that said sale was and is in all respects regular and in accordance with the Orders of the Court and the provisions of the Bankruptcy Act, and that the said sale is in the best interests of the above Bankrupt estates; and after hearing the attorney for the Trustee in support of an Order for confirmation of said sale as aforesaid, and no opposition appearing thereto; [41]



Now, Therefore, Good Cause Appearing, It Is Ordered, that the sale of all of that certain parcel of real property hereinafter described, together with the improvements thereon, free and clear of all taxes, liens and encumbrances, except only the following:

(1) State, County and City Taxes for the period January 1, 1955 through June 30, 1955, and to date now due and payable, or owing though not now payable.

(2) Assessment No. 100-36 for street improvement in the City of Las Vegas; the amount and method of payment of this assessment is unknown at this time.

(3) A trust deed to Pioneer Title Insurance and Trust Company, a corporation, Trustee, executed by Edna Shulman, a single woman, to secure her note in the sum of \$600,000.00, which note is referred to, but not set out, in favor of Bisno & Bisno, Inc., a Nevada Corporation, and to secure such other sums as may become due under the terms of said trust deed, dated July 9, 1954 and recorded July 12, 1954, as Document No. 14830, in Book No. 15 of Official Records, in the Office of the County Recorder of Clark County, Nevada, said Trust Deed is referred to in the Stipulation dated June 19, 1956 between the Trustee herein and LeRoy Investment Co., Inc. and Rosehedge Corporation, and the terms of said Stipulation shall govern the right of the parties thereto.

(4) By instrument dated April 14, 1955 and recorded April 29, 1955, as Document No. 45179, in Book No. 53 of Official Records, in the Office of the County Recorder of Clark County, Nevada, the hereinabove described Trust Deed was assigned by Bisno & Bisno, Inc. to Alexander Bisno and Louis Rubin. [42]

(5) By instrument dated April 18, 1955 and recorded April 29, 1955, as Document No. 45180, in Book 53 of Official Records, in the Office of the County Recorder of Clark County, Nevada, the hereinabove described Trust Deed was assigned by Louis Rubin and Alexander Bisno to LeRoy Investment Co., Inc., a California corporation, given as collateral security for the payment of a certain promissory note executed and delivered by the assignor to the Assignee to secure the payment of the principal sum of \$250,000.00 and interest. Reference to said instrument is made for full particulars.

(6) By instrument dated May 24, 1955 and recorded May 25, 1955, as Document No. 47538, in Book No. 56 of Official Records, in the Office of the County Recorder of Clark County, Nevada, the hereinabove described Trust Deed was assigned by Louis Rubin and Alexander Bisno to Rosehedge Corporation, given as collateral security for the payment of a certain note executed and delivered by the Assignor to the Assignee to secure the payment of the principal sum of \$195,000.00, and interest; reference to said instrument is made for full particulars;

together with the furniture, furnishings, gaming equipment of all kinds, and all other tangible personal property pertaining to the business of the Moulin Rouge, subject however, to all valid and subsisting conditional sales contracts and chattel mortgages against the said personal property, so made in open Court to S. Kohn, for the sum of \$116,000.00 cash, be and the same hereby is approved and confirmed, and Harry E. Miller, the Trustee of the above named Bankrupt estates, is hereby directed to execute and deliver to the said S. Kohn, or her nominee, a good and sufficient [43] instrument of title to the said real property hereinafter described, and a bill of sale of all of the right, title, interest and estate of the said Trustee in and to the aforesaid personal property, subject to all valid and subsisting conditional sales contracts and chattel mortgages against the said personal property, upon the payment of the said purchase price.

The said real property so sold, and referred to herein and affected hereby, is located in the County of Clark, State of Nevada, and more particularly described as follows:

That portion of the Northeast Quarter (NE  $\frac{1}{4}$ ) of the Southeast Quarter (SE  $\frac{1}{4}$ ) of Section 28, Township 20 South, Range 61 East, M.D.B. & M., described as follows:

Commencing at the Southeast corner of the Northeast Quarter (NE  $\frac{1}{4}$ ) of the Southeast Quarter (SE  $\frac{1}{4}$ ) of Section 28; thence North  $2^{\circ} 50' 40''$  East a distance of 50.09 feet to a point; thence

South 89° 18' 00" West along the North line of Bonanza Road a distance of 363.86 feet to the true point of beginning; thence continuing South 89° 18' 00" West a distance of 533.00 feet to the Southeast corner of that certain parcel of land conveyed by Edna Shulman to Alfred R. Child et ux by deed recorded January 19, 1955, as Document No.32228, Clark County, Nevada records; thence North 1° 24' 00" East a distance of 153.49 feet to a point; thence North 43° 36' 30" West a distance of 48.03 feet to a point; thence North 1° 24' 00" East a distance of 146.30 feet to the Northeast corner of said conveyed parcel; thence [44] North 89° 18' East a distance of 926.99 feet to a point; thence South 1° 24' 00" West a distance of 194.78 feet more or less to a Southeast corner of that certain parcel of land conveyed by J. A. Haggard et ux to Will Max Schwartz by deed recorded April 5, 1954, as Document No. 7190, Clark County, Nevada records; thence South 89° 18' West a distance of 360.00 feet to an inverted corner of the last mentioned conveyed parcel; thence South 1° 24' 00" West a distance of 140.09 feet to the true point of beginning.

/s/ JOHN C. MOWBRAY,  
Referee in Bankruptcy.

Approved as to form and contents:

MORSE, GRAVES & COMPTON  
and QUITTNER, STUTMAN &  
TREISTER,

/s/ By FRANCIS F. QUITTNER,  
Attorneys for Trustee.

WILLIAM G. RUYMANN,  
CHARLES J. KATZ,  
SAMUEL W. BLUM and  
ROBERT J. MAGDLEN,

/s/ By CHARLES J. KATZ,  
Attorneys for S. Kohn,  
Purchaser. [45]

[Stamped]: Received and Filed Sept. 23, 1957.  
John C. Mowbray, Referee in Bankruptcy.

[Endorsed]: Filed October 22, 1957.

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[Title of District Court and Causes.]

PETITION FOR REVIEW OF REFEREE'S  
ORDER CONFIRMING SALE OF PROP-  
ERTY FREE AND CLEAR OF LIENS,  
EXCEPTING CERTAIN SPECIFIED  
LIENS DATED SEPTEMBER 23, 1957

Alexander Bisno hereby represents:

1. That he is one of petitioners herein.
2. That he is a general partner in the Moulin Rouge, a limited partnership.
3. That petitioner Millie Sterett is a creditor of said limited partnership in the amount of \$35,000.00 secured by a chattel mortgage recorded on July 13, 1955 in Book 61, No. 51829 of official records of Clark County, Nevada, which chattel mortgage describes and lists the personal property included therein.



4. That petitioner Bernice Gurewitz is a general creditor of said limited partnership in the amount of \$7,000.00 and has filed [46] her Proof of Claim.

5. That on September 23, 1957, the Honorable John C. Mowbray, Referee in Bankruptcy, signed an order entitled as follows:

“Order Confirming Sale of Property Free and Clear of Liens, Excepting Certain Specified Liens.”

6. That petitioners' interest in said bankruptcy differ. That petitioners join in this Petition for Review in which petition there is no conflict and that petitioners represent to the Court that if at some later time a conflict of interest should arise between petitioners, separate counsel shall be obtained for such petitioners as might conflict with each other.

7. That petitioners allege that the following are the grounds for review of said Order and are grounds for reversal thereof:

a. On or about July 6, 1956, the above entitled Court by the Honorable John C. Mowbray in the above entitled proceedings authorized the sale of the real property described in said order free and clear of all liens. That the offer made by said S. Kohn to purchase said real property was not in accordance with said Order of July 6, 1956, in that said offer was not made free and clear of all liens and was made expressly subject to a trust deed in the amount of \$600,000.00 to Pioneer Title Insurance & Trust Company, a corporation trustee, made by

Edna Shulman, a single woman, to secure her note in said amount in favor of Bisno & Bisno, Inc. and the assignments thereof to LeRoy Investment Company, Inc. and Rosehedge Corporation. That by virtue of said exceptions, said sale to S. Kohn was not made in accordance with said Order of July 6, 1956 in that said sale was not free and clear of all liens. That notice as required in the Bankruptcy Act was not given with reference to said sale to S. Kohn, which was made contrary to said Order of July 6, 1956.

b. That the evidence is not sufficient to justify [47] said order in the following particulars:

1. Said promissory note and trust deed assigned in favor of LeRoy Investment Company, Inc. and Rosehedge Corporation were not and never were valid, subsisting, binding or enforceable and that said corporations are not the lawful holders, owners, pledgees or pledge holders of said promissory note and deed of trust.

2. That there are prior and superior rights than those asserted by said corporations.

3. That the promissory note dated July 9, 1954, issued by Edna Shulman is not valid, subsisting, binding, enforceable or supported by adequate or legal consideration.

4. That neither of said corporations were bona fide purchasers of said promissory note issued by Edna Shulman.

5. That neither of said corporations took said promissory note in good faith or for value.

6. That both of said corporations had actual notice of the infirmities in said note or knowledge of such facts that their actions in taking such note amounted to bad faith.

c. That the Order of September 6, 1957, provides on Page 12 thereof that if the property is sold, then the liens and the claims of LeRoy Investment Company, Inc. and Rosehedge Corporation shall be transferred to the net proceeds of said sale and said corporations shall be paid in full the amounts as determined in the Order of September 6, 1957; however, the Order further provides that if the property is not sold by the Court within . . . . days hereof, then LeRoy Investment Company, Inc. and Rosehedge Corporation are authorized to proceed with the sale of said property in accordance with the power of sale contained in the alleged deeds of trust and pledge agreement. That, however, an offer was received and filed by the Referee on September 6, 1957, by S. Kohn for the purchase of the real property, subject to the trust deeds which are the subject [48] matter of the Order of September 6, 1957, and contrary to the Order of the Referee dated July 6, 1956, and the Stipulation of June 19, 1956, as well as the Order of September 6, 1957, and said offer of S. Kohn was accepted by the Referee on September 6, 1957, without prior notice of said sale being given to creditors or parties interested in this proceeding.

d. That petitioners are informed and believe and thereupon allege that there was a compromise between the trustee in bankruptcy and LeRoy Investment Company, Inc. and Rosehedge Corporation, that this compromise was the result of prior negotiations, that said compromise was reached is evidenced by the fact that the Order of September 6, 1957 of 14 pages was prepared and ready for signature by the Referee in Bankruptcy on September 6, 1957, the date of the hearing set by said Referee, and that said adverse parties waived written findings of fact and conclusions of law, waived any and all rights of review and appeal from said Order and consented to the entry of said Order without further notice of motion. That neither said trustee nor the attorney for said Rosehedge Corporation and LeRoy Investment Company, Inc. gave notice of any creditors of said compromise and that said compromise and order based thereon is void for failure to give due notice to creditors as required by the Bankruptcy Act.

e. That there were irregularities in proceedings of the Referee by which petitioners were prevented from having a fair trial.

f. That there was accident and surprise, which ordinary prudence could not have guarded against.

g. That there is newly discovered evidence which petitioners could not with reasonable diligence have discovered and produced at the hearing in this matter.

h. That there was error in law occurring at the

hearing and excepted to by the parties injured by said Order. [49]

i. That petitioners incorporate by reference their Petition for Review of the Referee's Order of September 6, 1957.

8. That petitioners pray that said Order of September 23, 1957 be suspended and stayed pending ruling upon this Petition for Review and pending any appeals which may be taken in this matter.

9. That petitioners were unable to obtain a copy of said Order until September 28, 1957 and petitioners immediately thereafter presented a copy of said order to their attorneys requesting the opinion of said attorneys as to the validity thereof. That because of the lack of sufficient time to properly examine said order and to prepare a Petition for Review, petitioners allege that this Petition for Review may require amendment in order to fully and more properly set forth petitioners' grounds for review of said Order of said Referee and petitioners hereby request leave of Court in which to file an amended Petition for Review if for any reason this Petition should be defective or require amendment.

10. That petitioners request that the District Court consider upon its review all of the pleadings, papers, documents on file herein and all of the evidence, documentary and oral, and transcripts of testimony herein.

Wherefore, petitioners pray that said Order of



September 23, 1957 be reversed and that execution or enforcement of said Order be stayed pending the ruling on this Petition for Review and pending any appeals to be taken in said matter.

/s/ ALEXANDER BISNO.

ARTHUR N. GREENBERG and  
ROBERT COHEN,

/s/ By ARTHUR N. GREENBERG,  
Attorneys for Petitioners. [50]

Duly Verified.

Affidavit of Service by Mail Attached. [51]

[Stamped]: Received and Filed Oct. 3, 1957.  
John C. Mowbray, Referee in Bankruptcy.

[Endorsed]: Filed October 22, 1957.

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[Title of District Court and Cause.]

REFEREE'S CERTIFICATE ON PETITIONS  
FILED BY ALEXANDER BISNO (AND  
ALEXANDER BISNO ON BEHALF OF  
MILLIE STERETT AND BERNICE GURE-  
WITZ) AND BY LAWRENCE HAW-  
THORNE AND BY JACK SILVERMAN  
FOR REVIEW OF REFEREE'S ORDER  
DATED SEPTEMBER 6, 1957

To the Honorable John R. Ross, Judge of the  
Above-Entitled Court:

I, John C. Mowbray, a Referee in Bankruptcy of

said Court, before whom the above-entitled matters are pending, do hereby certify to the following:

1. Alexander Bisno, one of the general partners of the bankrupt partnership, Moulin Rouge, acting for himself, (and, according to his petition for review, acting on behalf of two others—Millie Sterrett and Bernice Gurewitz—who have not, however, signed any petition for review) has filed [52] a petition for the review of an order made and entered by the Referee on September 6, 1957; \* \* \* \* \*

The Order from which said Reviews have been taken provides, among other things:

“(1) Granting Motion of LeRoy Investment Co., Inc., a Corporation, and Rosehedge Corporation, a Corporation, For Leave to Proceed With Sale Under Pledge Sale, etc.,

“(2) Overruling and Denying the Objections of Trustee to Said Motion:

“(3) Upholding the Validity of the Pledges, and the Liens Thereof, of LeRoy Investment Co., Inc. and Rosehedge Corporation;

“(4) Upholding the Validity and Lien of the Pledged Property (i.e.) Promissory Note Dated July 9, 1954, and Deed of Trust of Same Date, and Recorded as Document No. 14830 on July 12, 1954, in Book 15, Official Records, of Clark County, Nevada.” [53]

\* \* \* \* \*

2. Millie Sterrett:—The Petition for Review states that Millie Sterrett is a secured creditor hold-

ing a chattel mortgage which describes and lists certain personal property. The Order of September 6, 1957, neither affects, nor relates, to her chattel mortgage claim, if any she has, nor does it relate to, affect, or include any of the described and listed chattel mortgage property. Millie Sterrett has filed no claim in these bankruptcy proceedings, either for any asserted deficiency, or as an unsecured creditor.

The time for filing claims had expired long prior to September 6, 1957; and, the Order of September 23, 1957, confirming sale of real property, and of certain personal property, expressly protects any alleged rights which Millie Sterrett asserts; for it is provided on the face of that Order that the sale of personal property to Rosehedge and LeRoy was expressly "subject, however, to all valid and subsisting conditional sales contracts and chattel mortgages against said personal property." Thus, if, in fact, Millie Sterrett does have a valid and subsisting chattel mortgage, nothing in that Order prejudices her right to pursue such remedy as she may have. Again, she is not [75] affected by the Order to sell free and clear of liens entered herein on the 6th day of July, 1956, for that order affected the real property only, and not the personal property.

Millie Sterrett has sought no relief, either by way of leave to foreclose her chattel mortgage, or petition in reclamation, in these bankruptcy proceedings. Instead, without filing any objections of any kind, and without seeking to participate in the

hearing giving rise to this Review, she, for the first time, has interjected herself into these proceedings by Petition for Review. No showing has been made that Alexander Bisno has any authority to file said Petition for, or on her behalf. The Referee is of the opinion that she is not a "person aggrieved" within the meaning of Section 39(c) of the present Bankruptcy Act. [76]

\* \* \* \* \*

(c) That Roschedge Corporation, a corporation, is now the actual and lawful owner and holder of a certain promissory note, dated May 24, 1955, and executed by Moulin Rouge, a Partnership, by Louis Rubin and Alexander Bisno, individually, in the principal sum of \$195,000.00 and bearing interest at the rate of 6% per annum; principal and interest [87] payable in installments of \$7,500.00, or more, on Wednesday of each week, commencing June 1, 1955, and continuing until the full amount of principal and interest has been paid; that there is now due, owing and unpaid to Roschedge Corporation, a corporation, upon the aforesaid promissory note the following sums:

For the amount of principal on said note—  
\$126,928.66.

For interest on said note at the rate of 6% per annum from August 27, 1955, to date hereof—  
\$15,442.99.

For attorney fees for attorneys for Roschedge Corporation, a corporation, which is hereby allowed by the Court in the sum of—\$8,890.00.



For Rosehedge Corporation's costs and expenses laid out, incurred and expended by it for the preservation or protection of the real property and for costs and disbursements incurred herein, which is hereby allowed by the Court in the sum of—\$3,585.00.

Making in all a total sum of—\$154,846.65.

and that the aforesaid total sum shall bear interest at the rate of 6% per annum from date hereof until paid.

That the aforesaid sums are, and each of them is, secured by a valid pledge of certain personal property, hereinafter described, pledged and delivered by Louis Rubin and Alexander Bisno, the then owners and holders of said personal property, to Rosehedge Corporation, a corporation, subject to the prior pledge of LeRoy Investment Co., Inc., as hereinbefore set forth, to secure, and as security for, the payment of the aforementioned promissory note; and all sums payable thereunder, and under the certain assignment and pledge agreement executed by Alexander Bisno and Louis Rubin, the owners and holders of the personal property hereinafter described, and duly recorded on the 25th day of May, 1955, as Document No. 47538 in Book No. 56 of Official Records in [88] the Office of the County Recorder of Clark County, Nevada; that at said time of the creation of the aforesaid pledge the said pledged personal property was then in the possession of LeRoy Investment Co., Inc., a corporation, as pledgeholder under its pledge, as herein-



before set forth, and no further, or other delivery of possession of the said pledged personal property was required to create a valid pledge in favor of Rosehedge Corporation, a corporation, as aforesaid, and that immediately following the pledge to Rosehedge Corporation, a corporation, written notice of said pledge was given to LeRoy Investment Co., Inc., a corporation, by Rosehedge Corporation, a corporation: that the aforesaid pledge to Rosehedge Corporation, a corporation, is a valid, subsisting and enforceable pledge, and constitutes a valid and enforceable pledge of, and a lien upon, said personal property hereinafter mentioned, which pledge and lien is subject and junior only to the pledge given to LeRoy Investment Co., Inc., a corporation, as hereinbefore mentioned and set forth in the preceding paragraph (b) hereof.

That said pledged personal property consists of the following personal property, to wit: (i) That certain promissory note, dated July 9, 1954, executed by Edna Shulman, as maker, and payable to Bisno & Bisno, Inc., or order, in the principal sum of \$600,000.00, with interest at the rate of 6% per annum, from December 1, 1954, on unpaid principal, payable monthly; and principal payable in installments of \$10,000.00, or more, on the 1st day of each consecutive month, commencing on the 1st day of June, 1956, and continuing until said principal and interest have been paid; and (ii) that certain deed of trust, dated July 9, 1954, and executed by Edna Shulman, a single woman, as Trustor, to the Pioneer Title Insurance and Trust

Company, a California corporation, [89] and qualified to do business in the State of Nevada, as Trustee, and to Bisno & Bisno, Inc., a Nevada corporation, Beneficiary, recorded as Document No. 14830 on July 12, 1954, in Book No. 15 of the Official Records in the Office of the County Recorder, Clark County, Nevada, and covering the real property described in said Order. That the said Rosehedge Corporation, a corporation, is the lawful pledgee and pledgeholder of the said \$600,000.00 promissory note and deed of trust securing the same, subject only to the prior and superior rights and possession of the same by LeRoy Investment Co., Inc., a corporation, as pledgee, as hereinbefore set forth. That the possession of LeRoy Investment Co., Inc., a corporation, as pledgee, of the aforesaid promissory note and deed of trust also constitutes the possession of the said promissory note and deed of trust for and on behalf of Rosehedge Corporation, a corporation, as subsequent pledgee of the said promissory note and deed of trust, subject and subordinate only to the prior pledge, rights and possession of LeRoy Investment Co., Inc., a corporation, as hereinbefore set forth. That the said pledge to Rosehedge Corporation, a corporation, and the lien thereof, and each of them, is valid, subsisting and binding upon and enforceable against the Receiver and Trustee herein, and the above-entitled bankrupt estates.

(d) That the aforementioned promissory note, dated July 9, 1954, and executed by Edna Shulman, as maker, to Bisno & Bisno, Inc., or order, is a

valid, subsisting, binding and enforceable promissory note, supported by adequate and legal consideration, and without any infirmities or defenses thereto, and is binding upon and enforceable against the Receiver and Trustee herein, and the above-entitled bankrupt estates; that the entire amount of principal [90] of said promissory note, and the interest thereon, in accordance with the terms and tenor of said promissory note, are now due, owing and unpaid; that the said promissory note is secured by that certain deed of trust, executed by Edna Shulman, a single woman, as Trustor, to Pioneer Title Insurance and Trust Company, a California corporation, qualified to do business in the State of Nevada, as Trustee, and to Bisno & Bisno, Inc., a Nevada corporation, as Beneficiary, and covering the real property described in said Order, and was recorded on July 12, 1954, as Document No. 14830, in Book No. 15 of Official Records, in the office of the County Recorder of Clark County, Nevada; that said deed of trust is a valid, subsisting, binding and enforceable deed of trust, and said deed of trust, and the lien thereof, are, and each is, binding upon and enforceable against the Receiver-Trustee herein, the above-entitled bankrupt estates, and the real property described in said Order; that said deed of trust created, and creates, and now constitutes a valid, subsisting and enforceable first lien upon the said real property described in said Order, and said real property is subject to and charged and burdened with said first lien and the aforesaid deed of trust, in the amounts,

and in accordance with the terms and tenor of the  
aforementioned promissory note of \$600,000.00 and  
the terms and provisions of the said deed of  
trust. [91]

\* \* \* \* \*

Dated: October 18, 1957.

/s/ JOHN C. MOWBRAY,

Referee in Bankruptcy. [103]

[Endorsed]: Filed October 19, 1957.

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[Title of District Court and Causes.]

REFEREE'S CERTIFICATE ON PETITIONS  
FILED BY ALEXANDER BISNO (AND  
ALEXANDER BISNO ON BEHALF OF  
MILLIE STERRETT AND BERNICE  
GUREWITZ) AND BY JACK SILVER-  
MAN FOR REVIEW OF REFEREE'S  
ORDER DATED SEPTEMBER 23, 1957

To the Honorable John R. Ross, Judge of the  
Above Entitled Court.

I, John C. Mowbray, a Referee in Bankruptcy of  
said Court, before whom the above entitled matters  
are pending, do hereby certify to the following:

1. Alexander Bisno, one of the general partners  
of the bankrupt [104] partnership Moulin Rouge,  
acting for himself, (and, according to his petition  
for review, acting on behalf of two others—Millie  
Sterrett and Bernice Gurewitz—who have not, how-  
ever, signed any petition for review,) has filed a



petition for the review of an Order made and entered by the Referee on September 23, 1957; \* \* \* \* \*

The Order from which said Reviews have been taken provides among other things:

(1) Confirmed and approved the sale of certain real property (therein described), with the improvements thereon, free and clear of all taxes, liens and encumbrances, excepting certain specified taxes and liens, and the sale of certain personal property (therein designated), subject to all valid and subsisting conditional sales contracts, and chattel mortgages against said personal property, made in open Court, at public sale, before the Referee on September 6, 1957, for the sum of \$116,-000.00, cash, to one S. Kohn, and directed the Trustee to execute and deliver to S. Kohn, or her nominee, a good and sufficient instrument of title to the real property, and a bill of sale of all of Trustee's right, title, interest and estate in and to said personal property, subject to all valid, subsisting conditional sales contracts, and chattel mortgages against said personal property, upon the payment of said purchase price. Said sale was to be consummated through an escrow; the bidder was to obtain a policy of title insurance guaranteeing the title to the real property to be free and clear, except as to certain specified liens and taxes; that additionally S. Kohn was to pay the costs of escrow, the sewer assessment, the costs of policy of title insurance, and insurance and utilities were to be pro-rated.

Following the sale, such escrow was opened, and



is now [105] pending at the Pioneer Title and Insurance Trust Company, Las Vegas, Nevada.

\* \* \* \* \*

The aforementioned Petitioners for Review, among others, also are Petitioners for Review from the Referee's Order of September 6, 1957.

Many of the specifications in the present Petition for Review of Mr. Bisno, et al., are identical with, or are repeated from their Petition for Review from the September 6, 1957 Order, or refers to the same subject matter. The present Bisno, et al., Petition for Review (page 5, lines 2-3) has incorporated, by reference, their Petition for Review from the Referee's Order of September 6, 1957.

The Referee, therefore, incorporates by reference, Referee's Certificate on Petitions for Review of Referee's Order, dated September 6, 1957, prepared and filed on October 19, 1957, in connection therewith, and makes the same a part hereof as though set forth herein in full. [106] \* \* \* \* \*

### The Proceedings

These cases commenced on October 19, 1955, with the filing of proceedings by Debtors under Chapter XI of the Acts of Congress relating to Bankruptcy. On October 19, 1955, this District Court, on the application of Alexander Bisno on behalf of Debtors, issued an Order to Show Cause requiring Rosehedge Corporation (hereinafter called "Rosehedge") and LeRoy Investment Co., Inc., (hereinafter called "LeRoy") to show cause before the

undersigned Referee why they should not be enjoined from proceeding with their then pending foreclosure of their pledges of certain personal properties, hereinafter more particularly set forth; thereafter, this Referee made an Order on October 27, 1955 staying said foreclosure proceedings pending hearing and further Order herein. Harry E. Miller was appointed Receiver herein, and subsequently, was elected Trustee in each of the above proceedings. On January 17, 1956, LeRoy and Rosehedge filed a written Motion for Leave to Proceed with Sale under Pledge Sale and Sale Under Power of Sale contained in Deed of Trust. Thereafter, Receiver filed his written objections thereto, and the matter was noticed and set for hearing on March 12, 1956. Said Motion and Objections were heard before the Referee on March 12, 13, April 5, 27, 28, 29, May 1, 24 and June 13 and 14, all in 1956, and then were submitted by the Referee for determination and decision. On September 6, 1957, the Referee made his Order herein, granting the motion; upholding the validity of the pledges of LeRoy and Rosehedge, and denying the objections of the Trustee. The proceedings had, and the evidence introduced in connection therewith are summarized and set forth in Referee's Certificate on Review from the September 6, 1957 Order, and by reference are made a part of this Certificate.

From October 19, 1955 until September 6, 1957, a period of approximately two full years, the aforesaid stay Order remained in full force and effect;

neither Rosehedge, nor LeRoy were permitted [107] to proceed with their foreclosures. During that period, the debtors (and subsequently the Bankrupts) presented no feasible plan of arrangement; on March 12, 1956, the debtors in open Court, were unable to present any feasible plan of arrangement, and consented to an adjudication in bankruptcy (See Tr. March 12, 1956—pp. 484, 490). Moulin Rouge, Inc., a corporation, was adjudged a bankrupt on March 15, 1956, and Moulin Rouge, a limited partnership, was adjudged a bankrupt on April 5, 1956. After adjudication, no plan of arrangement was ever presented to the Referee, although, on several occasions, various interested parties informed the Referee that a plan would be presented. The Referee extended invitations for any feasible plan, but none was submitted. It appeared, according to the debtors, that liabilities exceeding \$2,100,000.00 to both secured and unsecured creditors, and to tax and other claimants were outstanding. From October 19, 1955 until September 6, 1957, the aforesaid stay of foreclosure was continued in effect against Rosehedge and LeRoy, at the urgent request of some of the Petitioners for Review herein—among others—in the hope that in the interim a sale of debtors' property might be obtained, which would produce something for general creditors. While that hope remained, and out of deference to the position of creditors, and over objection of Rosehedge and LeRoy, the Referee continued the Stay Order, and the Receiver retained possession of the Moulin Rouge Hotel.

In the same intervening period of some two years, necessary expenses of administration, the costs of preservation of assets, and accruing tax liabilities were incurred and arose in an amount in excess of \$122,000.00. However, no sale or lease to any third party could be obtained during that period of time, although the said Receiver (now Trustee) advertised the property for sale in newspapers throughout the country, and solicited bids by brochures sent far and wide to possibly interested [108] parties, and actively solicited a sale or lease.

It is undisputed that the Bankrupts are hopelessly insolvent. Liabilities exceed \$2,000,000.00. The principal asset, the Moulin Rouge Hotel, while constantly offered for sale, or lease, over the period of some twenty-three months, attracted no bidder willing to pay a price that would yield anything to unsecured creditors.

From June 18, 1956, when Trustee's Petition to Sell the Property Free and Clear of Liens was first heard by the Referee until September 6, 1957, when said real property was finally sold, the Referee continued said hearings, and the sale of said real property, from time to time, in the hope that a more advantageous sale could be had, or a feasible plan of arrangement could be presented, which would give something to general unsecured creditors.

The Order of September 23, 1957 has not been reviewed by the Trustee, or by the Creditors Committee acting for unsecured creditors, or by either of the Bankrupts, or by the attorney of record for



the Bankrupts, or by the Citizens Building Committee which worked for months to find a satisfactory buyer or lessee, or by any bidder of said property. Petitioners for Review, herein, neither appeared at the sale, nor made any bid thereat, nor filed or made any objections to the sale at any time prior to the signing of the Order Confirming Sale. Seventeen days intervened between the date of sale, and the signing of the Order Confirming Sale.

The Specific Order Complained of, and the Proceedings In Respect Thereto

The issues before the Referee upon the aforesaid Motion of LeRoy and Rosehedge, and Receiver's (Now Trustee's) Objections [109] involved the validity of the pledges of LeRoy and Rosehedge, and the validity of the pledged property, consisting of a certain promissory note, dated July 9, 1954, executed by Edna Shulman, as maker, to Bisno & Bisno, Inc., or order, in the principal sum of \$600,000.00, with interest at 6% per annum from December 1, 1954; principal payable in installments of \$10,000.00, or more, on the first day of each month commencing June 1, 1955, until paid, and a certain deed of trust, securing said note, dated July 9, 1954, executed by Edna Shulman, as Trustor, to Pioneer Title Insurance & Trust Company, a California corporation, qualified to do business in Nevada, as Trustee, and to Bisno & Bisno, Inc., a Nevada corporation, as Beneficiary, and recorded on July 12, 1954, in the Office of the County



Recorder of Clark County, Nevada, and whether a valid lien was created upon the real property therein described.

This real property, and the improvements thereon (Moulin Rouge Hotel) was the principal asset of the debtors. At the beginning of Chapter XI proceedings, Harry E. Miller had been appointed Receiver of the Debtor's assets, (including the closed Moulin Rouge Hotel) for the preservation of such assets pending the formulation and adoption of a feasible plan of arrangement. The Receiver employed guards on the premises; procured insurance to cover the improvements and the contents thereof; and incurred various other necessary obligations and expenses in the preservation of the estate. Real estate taxes could not be paid and rapidly mounted. Such taxes, and costs and expenses of preservation were being incurred at the rate of approximately \$6,000.00 each month, and Receiver (now Trustee) was without funds to meet the same. Guards' salaries could not be met; insurance policies were cancelled because premiums remained unpaid, and LeRoy and Rosehedge, on occasions, did obtain the necessary insurance, until the Receiver either could re-instate the old, or obtain new insurance. Receiver was required to [110] advance, or borrow funds to meet his most pressing obligations. From October 19, 1955, several plans of arrangement were contemplated, yet no feasible, or realistic, plan was ever presented to the Referee, or to the creditors.

In fact, on March 12, 1956, the debtors, in open

Court, conceded that they could present no feasible plan of arrangement, and consented to an adjudication in bankruptcy. Such adjudications were made March 15, 1956, for the debtor-corporation, and on April 5, 1956, for the debtor partnership. The rapidly mounting unpaid obligations and expenses of Receiver (Trustee), the failure to present any feasible plans of arrangement, and the lengthy hearings on the LeRoy and Rosehedge Motion, and the objections thereto, created pressing problems.

With no feasible plan of arrangement available, the only solution appeared to be an immediate sale of the Bankrupts' property—this even before the completion and determination of the LeRoy and Rosehedge Motion, and objections thereto. But, this also presented problems.

The rights, claims and lien asserted by LeRoy and Rosehedge upon, and in connection with, the said real property had to be considered, and provisions made therefor, in the event of any sale, pending the completion and determination of their Motion, and objections thereto, especially since LeRoy and Rosehedge had informed the Referee and Trustee that they desired to bid at any sale held, and to utilize the value of their lien claims upon such bids, and in payment of the purchase price, if they were the successful bidders. This, LeRoy and Rosehedge had the right to do, if validity of their pledges, and liens was upheld (8 Remington on Bankruptcy—Henderson, p. 113, paragraph 2594.) [111]

On May 21, 1956, Harry E. Miller, Trustee, filed

a Petition herein, praying that the Trustee be authorized to sell, free and clear of liens, the property belonging to said estate. On June 5, 1956, the said Trustee filed a Supplemental Petition thereto. Likewise, on June 5, 1956, the Trustee filed a Petition herein praying that the Trustee be authorized to sell, in accordance with the terms of the Bankruptcy Act, the property belonging to said estates. All of said petitions were set for hearing on June 18, 1956, at 10:00 o'clock A.M. in the Courtroom of the Referee, United States Post Office and Courthouse Building, Las Vegas, Nevada. This was the same time and place which previously had been noticed and announced for the Continued First Meeting of Creditors, in each of the above Bankruptcy Proceedings. All said Petitions are annexed to this Certificate.

On June 5, 1956, Notice of Hearing on Petition to Sell Real Property was signed and filed herein, which set the time and place of the hearing upon said Petition, as aforesaid. Notice of hearing on such Petition was duly given by mailing copies of said Notice to all creditors of the above-named Bankrupts, attorneys, lien holders, lien claimants, all parties in interest, and others, on June 7, 1956. Such Notice and the Affidavit of Mailing of Ruth Brockman are annexed to this Certificate.

On June 5, 1956, an Order to Show Cause Why Property Should Not Be Sold Free and Clear of Liens, based upon Trustee's Petition filed May 21, 1956 and Supplemental Petition filed June 5, 1956, was signed and filed herein, and was directed to

each, every and all lien claimants of record, and listed in the Petition of May 21, 1956, to show cause before this Court in the [112] United States Post Office and Court House, Las Vegas, Nevada, on June 18, 1956 at 10:00 o'clock A.M. of said day why the Trustee should not be authorized to sell at public auction, pursuant to the Rules of this Court, free and clear of the lien holders mentioned and referred to in said Petitions, the real property therein described (being the real property involved herein), and further ordered that service of a copy of said Order be made upon said lien holders by regular mail, on or before June 7, 1956 which shall be deemed good and sufficient service of said Order and Notice.

Due Notice of the hearing upon Trustee's Petition to Sell Property Free and Clear of Liens, filed May 21, 1956, and upon the Supplemental Petition thereto, filed June 5, 1956, was given in accordance with the terms of said Order to Show Cause, to each, every and all lien-holders of record, and as listed in the aforesaid Petitions of May 21, 1956, by mailing said Order to Show Cause, on June 7, 1956, as well as to creditors of the Bankrupts, attorneys, and other parties in interest.

\* \* \* \* \*

On June 18, 1956, at the time and place designated in the aforesaid Notices and Order to Show Cause, the Continued First Meeting of Creditors, and Hearings upon the aforementioned Petitions of Trustee came on regularly to be heard. There were present a large number of creditors, several



attorneys representing various secured and unsecured creditors, as well as other persons and parties interested in these bankruptcies.

The detailed particulars of said hearings will immediately follow this brief summarization thereof: (a) Counsel present were requested to note their appearance for the record, and the clients whom they represented; it appeared that Alexander Bisno and Jack Silverman, two of the Petitioners for Review, were represented by attending counsel; (b) an audible roll call of all the lien holders, lien claimants and tax authorities, listed in [113] the Petition, filed May 21, 1956, was made, and their presence or absence was noted; (c) the Referee directed any objections to the pending petitions be presented in writing and filed with the Court—none were filed; (d) counsel for Jack Silverman requested, and was granted time within which to present a suggested plan of arrangement, and was assured by the Referee that the suggested or any plan of arrangement would be welcomed with open arms; (e) a proposed Stipulation between Trustee, and LeRoy and Rosehedge, was presented in open Court for consideration and approval, which provided, among other things, that LeRoy and Rosehedge were permitted to use the value of their lien claims upon any bid made by them, or upon the payment of the purchase price, if they were successful bidders, at any sale of the bankrupt's property held pending the final determination of their Motion and Receiver's Objections thereto, and after discussion thereon, said



Stipulation was corrected and redrawn to eliminate the objections thereto, and as so corrected and redrawn, it again was presented and approved without objection, and then signed and filed; (f) Trustee's counsel offered the same Stipulation to all other lien holders and lien claimants in the order of their priority; (g) the Referee granted the pending Petitions and directed Trustee's counsel to prepare the appropriate order; (h) the sale, and all matters on the calendar were continued to July 30, 1956 at 10:00 A.M. at the same place.

The particulars of the proceedings had before the Referee June 18 and 19, 1956, are as follows:

"Referee: We will come to order. This is the time set for the continuance of the First Meeting of Creditors in both of these proceedings, which have been [114] consolidated, and also for the Hearing on the Petition of the Trustee to sell the Property of the Debtor, Free and Clear of Liens, together with the Hearing on the Petition of the Trustee to sell the Real Estate of the Debtors. Before proceeding further, we would like to have counsel and parties note their appearances for the benefit of the record." (Tr. Continued First Meeting, etc. of June 18-19, 1956, p. 1656.)

\* \* \* \* \*

The Referee commenced the hearing upon the Petition of Trustee to Sell Real Property; certain objections were interposed, some of which were applicable to both Petitions. The Referee then directed that the hearings upon both petitions proceed at the same time, so that all objections could

go to both Petitions. Various counsel interposed objections. Mr. Blum objected that LeRoy and Rosehedge would be prejudiced seriously by any sale, pending the completion and determination of their Motion unless a proposed Stipulation with Counsel for Trustee, which had been prepared, but not signed, was acceptable to, and approved by the Court, wherein LeRoy and Rosehedge, among other things, would permit a sale of the real property free and clear of liens, pending the final determination of the LeRoy and Rosehedge Motion, and Objections thereto, on certain conditions, provided that LeRoy and Rosehedge could bid at any sale to be held, and could use the amount of the respective lien claims, in whole or in part, on account of any bids made by them, and in whole or in part, on account of the payment of the purchase price if they became the successful bidders. [117]

\* \* \* \* \*

The Referee then granted the Petitions of the Trustee and directed Trustee's counsel to prepare the appropriate Order. [127]

\* \* \* \* \*

Mr. Blum's request that the Stipulation be made a part of the Order, by reference, and approved by the Referee, also was granted. The Stipulation was signed and filed and approved by the Referee on June 19, 1956.

\* \* \* \* \*

The portions of the Stipulation, so far as pertinent herein, in effect provided that pending determination of the LeRoy and Rosehedge Motion, and

the objections thereto, the real estate in question may be sold by the Trustee at public auction under the supervision and subject to the approval of this Court, free and clear of the lien of the pledges of LeRoy and Rosehedge, and of the lien of the Shulman trust deed, upon certain terms and conditions, including, (a) that such sale be without prejudice to the rights, and liens of LeRoy and Rosehedge, and the objections [128] of Receiver (Trustee); (b) that said property be expeditiously sold and confirmed within ninety days from June 20, 1956, unless extended by the Court for good cause shown; (c) that the liens of LeRoy and Rosehedge be transferred to the proceeds of sale in the amounts, order and priority, and with the same rights, benefits and privileges claimed or possessed by LeRoy and Rosehedge; and that the actual costs and expenses of insurance premiums, the actual and necessary costs of preservation of the estate, incurred since the Chapter XI proceeding, and the actual and necessary costs and expenses of sale be entitled to priority over the liens of Leroy and Rosehedge; (d) that LeRoy and Rosehedge be given ten days notice of sale, and of hearings upon applications for confirmation; (e) that LeRoy and Roschedge may be bidders at said sale, and entitled to use their lien claims, in whole or in part, on account of bids made, by them, and, as payment upon the purchase price, if they become the purchasers; (f) that if they are the purchasers a trustee's deed, and possession, be delivered to LeRoy and Rosehedge, who shall have the use and possession of the prop-

erty free from the claims of Trustee except to pay Trustee for the actual insurance premiums incurred, the actual and necessary costs and expenses of preserving the estate, and the actual and necessary costs of sale, and that until final determination of said Motion and Objections, said real property cannot be transferred, conveyed or encumbered by them; (g) that if their liens be finally upheld in an amount equal to or greater than the purchase price, LeRoy's and Rosehedge's title to the property free and clear of any rights, or title of the Trustee, or these Estates; (h) that if their liens be finally determined to be invalid, in whole, or in part, LeRoy and Rosehedge shall immediately pay to Trustee that portion of the purchase price for which they received credit by virtue of their lien-claims; (i) that any dispute regarding costs and expenses of preservation and insurance be submitted to and determined by the Court; (j) that if LeRoy and Rosehedge are not [129] purchasers of said property, and their liens are upheld by the Referee, the amount thereof, as determined, shall be paid to them, and if the Trustee reviewed or appealed from said decision, LeRoy and Rosehedge agreed in writing, which would be guaranteed by Court approved individuals to repay such sums to the Trustee to the extent their lien claims were finally determined invalid, and for which they received payments.

Other portions of said Stipulation set forth the items to be included in determining the amount of the claims, and a description of the real property involved.



At the conclusion of the hearings on June 19, 1956, the Continued First Meeting of Creditors in these proceedings, the Hearings, and the Notices of Hearings of the aforementioned Trustee's Petitions; Notice of Sale and the said Sale, and all matters on the calendar, were continued by the Referee to July 30, 1956, at the hour of 10 o'clock a.m. at the United States Post Office and Court-house at Las Vegas, Nevada.

On July 6, 1956, the Order for Sale of Property and Order Authorizing Sale of Property Free and Clear of Liens was presented to, and signed and filed by the Referee. Said Order is annexed to this Certificate.

Said Order, by its terms (a) overruled all objections made to the aforementioned Petitions of Trustee; (b) approved the Stipulation entered into on June 19, 1956 between Counsel for Trustee and Rosehedge and made the same a part of said Order. (c) authorized the Trustee to sell the property of the Bankrupts, in accordance with the terms of the Bankruptcy Act, including the real property therein described, and including the furniture, fixtures, and other personal property contained therein, upon such terms and conditions as the Court shall hereafter approve; (d) authorized the Trustee to sell, in accordance with the terms of the Bankruptcy Act, the property described therein, free and clear of the lien set [130] forth in the Petition filed May 21, 1956, and enumerated the various liens and lien claimants affected thereby. (Included therein are the liens of LeRoy and



Rosehedge, the Shulman Trust Deed lien, the liens of the Petitioners herein, and the lien of Lawrence Hawthorne, d.b.a. Hawthorne Construction Co.); (e) ordered the liens listed therein be transferred to the proceeds of the sale, subject to the terms of the June 19, 1956 Stipulation; and (f) ordered that the actual costs insurance premiums and the actual and necessary costs and expenses of preservation incurred since the filing of the Petitions in Bankruptcy, including the actual and necessary costs and expenses of sale, shall be entitled to priority over, and were prior to the liens described in said Order, and the claims of general creditors.

\* \* \* \* \*

On July 30, 1956, the Continued First Meeting of Creditors, the Continued Hearings on the Petitions of the Trustee, and particularly the Petition for Authority to Sell, and all matters noticed for hearing on June 18-19, 1956, and, the matter of the sale were held before the Referee, at the United States Post Office and Courthouse, Las Vegas, Nevada, at 10 o'clock a.m. No sale was held as the Trustee was unable to advertise the same, due to lack of funds. [131]

\* \* \* \* \*

The Continued First Meeting of Creditors, the matter of the sale, and notice thereof; the Hearings upon Trustee's Petition to sell the real property, and the Notice of Hearing thereof, were, and each of them was, then continued by the Referee to September 10, 1956 at 10:00 A.M. in the United States Post Office and Courthouse at Las Vegas, Nevada.

On September 10, 1956, at the aforesaid time and place, all the aforementioned matters came on to be heard before the Referee.

\* \* \* \* \*

Thereupon, the Referee continued the said sale, and the time and notice thereof, the Continued First Meeting of Creditors, the Continued Hearing upon Trustee's Petitions to Sell the Real Property, and the Notice of Hearing thereof and all matters on the calendar, to October 8, 1956 at the hour of 10:00 o'clock a.m. in the United States Post Office and Court House, Las Vegas, Nevada.

On October 8, 1956, at the aforesaid time and place, the matter of the said sale, the Continued First Meeting of Creditors, the Continued Hearing upon Trustee's Petition to sell Real Property, and the Notice of hearing thereof, and other matters, came on regularly for hearing before the Referee.

\* \* \* \* \* [132]

The said sale, and the notice thereof, the Continued First Meeting of Creditors, the Continued Hearing upon Trustee's Petition to Sell Real Property, and the Notice of hearing thereof, and other matters, were continued, for good cause shown, by the Referee, to November 27, 1956, at the hour of 10:00 o'clock A.M. in the United States Post Office and Court House, at Las Vegas, Nevada. [133]

\* \* \* \* \*

On November 27, 1956, the said Sale, the Continued First Meeting of Creditors, and the Continued Hearing upon Trustee's Petition to Sell Real Property, and other matters, came on regularly

to be heard before the Referee, at the aforementioned time and place, and the Referee in open Court offered for sale at public auction, the said real property and personal property of the Bankrupts free and clear of liens. Mr. Katz, on behalf of LeRoy and Rosehedge made a bid in the amount of their lien claims. One other bid was made—partly in cash and the balance thereof payable over a period of years. This bid was inadequate and unacceptable.

\* \* \* \* \*

The Referee, therefore, rejected all bids, and the Sale, and Notice thereof, the Continued First Meeting of Creditors, the Continued Hearing upon the Trustee's Petition to Sell Real Property, and the Notice of hearing thereof, and all matters on the calendar, were, and each of them was continued by the Referee to January 25, 1957 at the hour of 10:00 o'clock A.M. in the United States Post Office and Court House, at Las Vegas, Nevada.

On January 25, 1957, at the aforesaid time and place, the said sale, the Continued First Meeting of Creditors, the Continued Hearing upon Trustee's Petition to Sell Real Property, and other matters, came on regularly to be heard before the Referee. The Referee again offered the said real and personal property for sale at public auction, in Open Court. [134] \* \* \* \* \*

After some discussion, and there being no other bids, and to give general creditors an opportunity to obtain something on their claims, the Referee, upon payment of the said \$5,000.00, continued the

Sale, and the Notice thereof; the Continued First Meeting of Creditors; the Continued Hearing upon the Trustee's Petition to Sell Real Property, and the Notice of Hearing thereof, and other matters, to February 26, 1957, at the hour of 10:00 o'clock A.M. in the United States Post Office and Courthouse, at Las Vegas, Nevada.

On February 26, 1957, at the time and place, as aforesaid, upon the request of Mr. Frazer for additional time, and upon payment of an additional \$2500.00 to the Trustee to help defray expenses during the period of continuance, and there being no other bids, the Referee continued the said Sale, and the Notice thereof, the Continued First Meeting of Creditors, the Continued Hearing upon Trustee's Petition to Sell Real Property and the Notice of Hearing [135] thereof, and other matters, to May 23, 1957 at 10:00 o'clock A.M. at the United States Post Office and Court House, Las Vegas, Nevada.

On May 23, 1957, at said time and place, and upon the request of Mr. Frazer for additional time, and upon the payment of an additional \$2500.00 to the Trustee to help defray expenses during the period of continuance, and there being no other bids, the Referee continued the said Sale, and Notice thereof; the Continued First Meeting of Creditors; the Continued Hearing upon Trustee's Petition to Sell Real Property, and the Notice of Hearing thereof, and other matters, to July 22, 1957 at 10:00 o'clock A.M. at the United States Post Office and Courthouse, Las Vegas, Nevada.



On July 22, 1957, at said time and place, and upon Mr. Frazer's request for a further continuance, and upon the payment of an additional \$2500.00 to Trustee to help defray expenses during the period of continuance, and there being no further bids, the Referee continued the Sale, and Notice thereof; the Continued First Meeting of Creditors; the Continued Hearing upon the Trustee's Petition to Sell Real Property, and the Notice of Hearing thereof, and all other matters, to September 6, 1957, at the hour of 10:00 o'clock A.M. at the United States Post Office and Courthouse, Las Vegas, Nevada.

On September 6, 1957, at the aforesaid time and place, the matter of the sale of the property of the Bankrupts, the Continued First Meeting of Creditors, the continued Hearing on Trustee's Petition to Sell Real Property, and other matters came on regularly to be heard before the Referee. This meeting was well attended. A large number of people, creditors, and other persons and parties interested in the Bankrupt estates were present. The Trustee, and his counsel, counsel for LeRoy and Rosehedge, Mr. Frazer, among others, were present. None of the Petitioners for Review were present, either in person, or by counsel. After disposing of certain other matters, the Referee announced that he was conducting a sale of the property of the Bankrupts at public auction in open Court, and [136] requested bids for the same. Mr. Katz then submitted a bid, for and on behalf of his clients, LeRoy and Rosehedge, and explained that



said bid, for convenience, was being made in the name of S. Kohn, who was a secretary in his office, but, that in fact, said bid was the bid of LeRoy and Rosehedge. He then proceeded to make the bid, and read a written bid which he had prepared. He thereupon submitted the written bid to the Referee. The Referee then read aloud the terms of said written bid to all persons present in Court. According to the terms of said bid, S. Kohn offered to purchase the real property then being offered for sale, and the improvements thereon, for the sum of \$116,000.00 cash, free and clear of all liens, claims, and taxes, except the following: (1) Certain specified and announced State, County and City taxes therein particularly enumerated; (2) Certain specified street improvement assessments therein particularly described; (3) the aforementioned \$600,000.00 Shulman deed of trust, therein particularly described; (4) the assignment thereof by Bisno and Bisno, Inc. to Alexander Bisno and Louis Rubin, therein particularly described; (5) the assignment and pledge of said deed of trust by Alexander Bisno and Louis Rubin to LeRoy Investment Co., Inc., therein particularly described; and (6) the assignment and pledge of the said deed of trust by Alexander Bisno and Louis Rubin to Rosehedge Corporation, therein particularly described; said exceptions being sub-paragraph 1, 2, 5, 6, 7 and 8 of paragraph (4) of Referee's Order dated July 6, 1956; said bid further provided that additionally, and for the same consideration, and part of said transaction, there shall be conveyed

to said purchaser, by bill of sale, all of Trustee's right, title and interest, in and to all the furniture, furnishings, gaming equipment of all kinds, and all other tangible personal property pertaining to the business of Moulin Rouge, but subject, however, to all valid and subsisting conditional sales contracts and chattel mortgages against the said personal property. Said bid further provided that such sale shall be consummated through an escrow to be opened upon the acceptance of said bid by the Court; the purchase price shall be [137] paid through escrow, and purchaser shall obtain policy of title insurance guarantying title to be free and clear, except as provided in said bid. Additionally, said bid included, and bidder orally agreed to pay all costs of escrow, including a certain sewer assessment, the cost of the title insurance policy, and that utilities and insurance were to be pro-rated. Said bid is annexed to this Certificate. The Referee then ordered the bid filed and asked for other bids. Thereupon, Mr. Frazer announced that he would like to have the sale recessed for an hour, or longer, to enable him to confer with Mr. Katz, and the attorney for Coast Distributing Co., to ascertain if the plan he was about to propose would be acceptable to their respective clients. He stated that his clients had lost the A.E.C. lease, but there still was a possibility that they might get it; that nevertheless, his clients had a contingent offer of a loan of \$350,000.00 with interest at 10% per annum, subject to terms to be subsequently worked out, and that such loan would have to be secured

by a new first deed of trust upon the real property then being offered for sale. Under said proposal, Coast Distributing would, according to Mr. Frazer, be required to leave their personal property on the premises for a considerable number of years, and LeRoy and Rosehedge would have to subordinate their first lien to the new deed of trust which his clients would be required to give, and the balance of the LeRoy and Roschedge lien claims would be paid to them in installments over a period of approximately ten years; thereafter, other lien claimants and general creditors might realize something, if all worked out well. The Referee then asked if there were any other bids and there were none. At the request of Mr. Frazer, and still hoping something could be saved for general creditors, the Referee recessed the sale until 1:30 P.M. of said day, to enable Mr. Frazer to consult with Mr. Katz, the attorney for Coast Distributing [138] Co., and Mr. Quittner, attorney for the Trustee.

The Court re-convened at 1:30 o'clock P.M. for the afternoon session. The Referee inquired of Mr. Frazer if he had been able to arrive at any agreement with other counsel regarding his proposed offer. Mr. Frazer stated that he was unable to do so. He then made an oral bid to purchase the property offered for sale, free and clear of all liens for the consideration, and upon the conditions previously outlined by him during the morning session. Counsel for Coast Distributing objected to such bid. Mr. Quittner then asked Mr. Frazer what provision he intended to make for the

payment of real estate taxes which then had accrued in the amount of approximately \$52,000.00, a greater part of which had accrued since the filing of these proceedings. Mr. Frazer said that the only amount of money that was available was the proceeds of the loan the bidder hoped to finalize on the property they were bidding on, which was not sufficient to take care of those taxes, and that he did not know how the real estate taxes would be handled.

It was apparent that the Court was powerless to compel secured creditors to subordinate their existing security to a hoped for first deed of trust which might or might not be finalized.

Mr. Katz pointed out that the proposed loan of \$350,000.00 was not a firm offer, but was dependent upon the lender and borrower agreeing upon terms satisfactory to the lender. In support of such statement, Mr. Katz read a telegram in the possession of Mr. Frazer, and sent by the proposed lender, to that effect. Mr. Katz further [139] pointed out that under such plan and bid, LeRoy and Rosehedge were required to subordinate their present first lien security to a first deed of trust in favor of the proposed lender; that from the proceeds of such loan, his clients would receive approximately one-third of their claim, and that it would take ten years to pay off the balance, even assuming that the business lease contemplated by Mr. Frazer's clients was successful and profitable; and, even then, that the unsecured creditors might, or might not, receive anything.



The Referee stated that for two years the uppermost thought in his mind was to assist general unsecured creditors; that he had restrained secured creditors from proceeding to foreclose their security for that length of time; that the Trustee had used every effort to sell the assets without avail; plans of arrangement were proposed, but no feasible one had been presented; that under the law and the Bankruptcy Act, he could not forever keep the secured creditors from enforcing their rights; that the property was depreciating, and costs and expenses were rapidly mounting; that a report just submitted by the Trustee showed that approximately \$52,000.00 of real estate taxes had accrued, and were unpaid, the greater portion thereof since the commencement of these bankruptcy proceedings, which were a cost of administration; that the unpaid costs and expenses of preservation of the assets incurred by the Receiver and Trustee were in excess of \$70,000.00; these and taxes were accumulating at the rate of in excess of \$6,000.00 per month; that costs of administration have been incurred and were unpaid; that this property has been extensively advertised for long periods of time throughout the United States by the Trustee, and yet no bid, or offer, had been received or submitted which could be accepted by the Referee; that the offer and bid made by [140] Mr. Frazer was not a firm bid; it was too contingent and depended upon too many uncertainties; it required further delays, and required the consent of all lien holders, and, apparently, such consents were



not forthcoming; the Referee could not compel such consents; that the time has come when the Referee must do something to stop the mounting expenses, and that under the law and the Bankruptcy Act, he could not delay the proceedings any longer; that the bid made by Mr. Frazer was a contingent bid and could not be accepted by the Referee in its present form. The Referee then asked if there were any other bids to be made, or if any other person present desired to make any other or further bid. Mr. Katz then renewed his previous bid. Again the Referee asked for other or further bids, and no other or further bids were made. Thereupon, the Referee announced the acceptance of the bid made by Mr. Katz in the name of S. Kohn for and on behalf of LeRoy and Rosehedge as the highest and best bid made, and there being no objections thereto, directed Trustee's counsel to prepare and present for signature an appropriate Order confirming said sale to S. Kohn.

\* \* \* \* \*

The Referee then proceeded with the hearing of some matters on the calendar, following which the continued First Meeting of Creditors was adjourned.

Immediately after the adjournment of the meeting, the escrow, as provided in the S. Kohn bid, was opened at the Pioneer Title Insurance and Trust Company at Las Vegas, Nevada, and is now pending.

On September 23, 1957, the Referee signed and filed the Order Confirming Sale. [141]

None of the Petitioners for Review was present at, or objected to the sale held on September 6, 1957. From September 6, 1957 to September 23, 1957, none of the Petitioners for Review made any oral or filed any written objections to said sale, nor did any of them during such time interpose any objections to the confirmation of said sale. Yet, a period of seventeen days intervened between the sale and the signing of the Order Confirming Sale.

\* \* \* \* \*

It appears that under the Stipulation of June 19, 1956, and the Referee's Order of July 6, 1956, LeRoy and Rosehedge were permitted to utilize, in whole or in part, the amount of their lien claims in connection with any bid made by them, or purchase price to be paid by them. The bid by Mr. Katz on September 6, 1957 in the name of S. Kohn was announced as, and, in fact, was the bid of and on behalf of LeRoy and Rosehedge, and was so considered and treated by the Referee, and all persons present at said sale. This bid was made subject to the liens and claims of LeRoy and Rosehedge. This, in the opinion of the Referee, at the time of sale, was the equivalent of utilizing the value of the LeRoy and Rosehedge claims upon the bid made. Had the bid been increased by the value of such lien claims, a credit upon the purpose price in the amount of the value of the said lien claim would have had to be given. Such procedure would have been a useless and idle act. (6 Remington-Henderson—114; *In re Harralson*, 179 F. 490, 492, 493. Under similar circumstances, the Court

states, "The Creditor was entitled to have the purchase price credited on his allowed claim. It would have been a useless ceremony for him to pay the \$1500.00 into Court and [142] then have it repaid to him after credit on his allowed claim." See also *Wolffgram v. Marsh*, 280 F. 865, 866.)

No objection was interposed to the bid when made; it was the highest and best bid presented at the sale; no objection was interposed to said bid, or sale at or prior to the signing of the Order Confirming Sale. The Order of July 6, 1956, provided that the Trustee was authorized to sell said real and personal property "upon such terms and conditions as the Court shall hereafter approve." Petitioners for Review interposed no objections thereto when said bid was made, nor thereafter prior to the signing of the Order Confirming Sale. They have not shown that a higher or better bid or offer can be obtained.

#### The Status of the Petitions For Review to Review the Order of September 23, 1957

Section 39 (c) of the present Bankruptcy Act limits the right to review to "a person aggrieved". Additionally, the decisions indicate that the right to review may be lost by estoppel. (See cases cited in 8 *Remington on Bankruptcy* (Henderson) 294.) Generally, any one who desires to file objections to a sale should do so immediately, as objections generally are too late after confirmation. (See *Shamokin Lumber & Construction Co.*, 54 F. Supp. 480.)

\* \* \* \* \* [143]

2. Millie Sterrett—Chattel mortgage claimant. The matters set forth in Referee's Certificate on Review from the September 6, 1957 Order (pp. 24-25) relating to Millie Sterrett, are equally applicable herein, and said matters are made a part hereof by reference.

Additionally, the record shows that on June 7, 1956, there was mailed to Millie Sterrett a copy of the Order to Show Cause Why Property Should Not Be Sold Free and Clear of Liens, issued July 5, 1956, and Notice of Hearing on the Petitions set for June 18, 1956. She neither appeared in person or by counsel at that hearing, nor at any hearing, meeting, or proceeding in these Bankruptcy matters, subsequent thereto. She was not present at the sale, and no bid on her behalf was made, nor any objections [144] interposed to the bid or sale. She was given notice of the hearing on the Petition to Sell, and of the sale, the First Meeting of Creditors, and all Continued First Meeting of Creditors. She filed no objections or exceptions to the bid or sale between the date of sale, and the Order Confirming Sale. The Order Confirming Sale expressly protects her rights as a chattel mortgage lien claimant. It provides that said personal property was sold "subject to all valid and subsisting conditional sales contracts and chattel mortgages against said personal property." Whatever rights she may have in respect to her chattel mortgage, such rights are expressly preserved to her under the Order Confirming Sale. No showing has been made that Alexander Bisno has any authority



to file said Petition for Review for or on her behalf. She makes no showing that a higher or better bid or sale can be obtained. It is respectfully submitted that she is not a person aggrieved by the Order of September 23, 1957, and is estopped from reviewing said Order. Likewise, her objections to said Order are not timely. [145]

\* \* \* \* \*

Whether the S. Kohn bid was one to purchase the property, subject to the liens of LeRoy and Rosehedge, or was one to purchase the property, free and clear, by increasing the bid by the amount of such liens and then receiving a credit upon the purchase price in the amount of such liens, the result is the same.

\* \* \* \* \*

The net amount of the money received by the Trustee in either case is identical. But the bid, subject to certain real estate taxes, was more beneficial to all creditors, secured and unsecured, than a free and clear bid, for in a bid subject to taxes, no part of the proceeds of the sale was charged with such taxes.

Furthermore, the bid and sale complied with the terms of the July 6, 1956, Order, which expressly provided for the sale of the real property therein described "including the furniture, fixtures, and other personal property contained therein, upon such terms and conditions as the Court shall hereafter approve." (July 6, 1956 Order page 3, lines 23-26.)

The Referee approved and confirmed the sale



upon [147] such terms and conditions as specified in the bid. No higher or better bid was made or received during the sale. His rights, as a holder of a chattel mortgage, are fully protected by the Order Confirming Sale wherein the sale of the personal property was confirmed "subject to all valid and subsisting conditional sales contracts and chattel mortgages."

\* \* \* \* \*

### Status of The Record

After careful consideration of all the evidence and the proceedings had and taken in connection with and during the sale of the property involved herein, the Referee advises the Honorable Court that the Record discloses:

1. That the bid of S. Kohn made on September 6, 1957, in open Court, for the purpose of the real and personal property then offered for sale was, in fact, the bid of LeRoy and Rosehedge, who, in reality, made said bid for themselves, in the name of S. Kohn.

2. That said bid of S. Kohn was the highest and best bid made and received at the said sale on September 6, 1957, and was the highest and best bid that could have been obtained for said property.

3. That the said bid of S. Kohn and the sale to S. Kohn made pursuant thereto conforms, in form and effect, with the terms and provisions of the Stipulation of June 19, 1956, and the Order of July 6, 1956.

4. That the said sale conducted by the Referee in Open Court on September 6, 1957, was a public

sale, and was legally [148] made, and fairly and impartially conducted, and was and is in all respects regular and in accordance with the Orders of this Court, and the provisions of the Bankruptcy Act.

5. That due notice of the time and place of sale was, and has been given to all creditors of the above Bankruptcy estates, and to all lien holders and lien claimants, attorneys, and other parties in interest, as required and provided by law and the provisions of the Bankruptcy Act.

6. That due notice of said Sale and the time and place thereof, was given to the general public in the form and manner, and for such time as required by law and the Bankruptcy Act.

7. That the sale made on September 6, 1957 to S. Kohn, and confirmed by Order of September 23, 1957, is in the best interests of the above Bankrupt Estates.

8. That none of the Petitioners for Review objected to the form of the bid, or to the sale, at or during the conduct of said sale on September 6, 1957, or at any time thereafter up to and including the time of the signing or filing of the Order Confirming Sale on September 23, 1957.

9. That no written objections or exceptions were ever filed, or any oral objections interposed, by Petitioners for Review, or any of them, or by any one else, to the bid made by S. Kohn, or to the Sale made in Open Court on September 6, 1957, or to either the bid or sale, or to any Order Confirming said Sale, at any time prior to the signing and filing

of the Order Confirming Sale on September 23, 1957. [149]

The Question Presented

1. Is the Order of September 23, 1957, supported by the evidence, and record of proceedings herein?

2. Was the Sale held in Open Court before the Referee on September 6, 1957, and confirmed by Order Confirming Sale on Septemebr 23, 1957, legally made and fairly conducted and regular in all respects, and in accordance with the Orders of this Court and the provisions of the Acts of Bankruptcy?

3. Are the Objections and Exceptions of Petitioners for Review to the sale held on September 6, 1957, and confirmed on September 23, 1957, timely taken?

4. Are Petitioners for Review entitled to be heard herein, and have such Petitioners any standing before the District Court on Review?

5. Should the Petitions for Review be dismissed because the Petitioners on Review are either persons who are not aggrieved by the Order complained of, or are persons who have lost their rights to review such Order?

6. Should the Petitions for Review be dismissed because of the insufficiency of such Petitions for Review, both in form and contents? [150]

\* \* \* \* \*

Dated: October 21, 1957.

/s/ JOHN C. MOWBRAY,

Referee in Bankruptcy. [151]

[Endorsed]: Filed October 22, 1957.

[Title of District Court and Causes.]

MEMORANDUM OF LAW IN SUPPORT OF  
PETITION FOR REVIEW OF REFEREE'S  
ORDER OF SEPTEMBER 23, 1957

A. The Parties.

The parties to said Petition for Review are Millie Sterett, a secured creditor, Bernice Gurewitz, a general unsecured creditor and Alexander Bisno, a general partner of the bankrupt.

\* \* \* \* \*

G. Position of Millie Sterett.

Petitioner Millie Sterett holds a chattel mortgage which admittedly was recorded subsequent to the chattel mortgage held by Rosehedge. Rosehedge asserts that its chattel mortgage covers the same personal property as the Millie Sterett chattel mortgage.

In the Certificate on Review prepared by the attorney for Rosehedge and signed by the Referee, the following appears on Pages 38 and 39 thereof:

“It appears that under the Stipulation of June 19, 1956, and the Referee's Order of July 6, 1956, Leroy and Rosehedge were permitted to utilize, in whole or in part, the amount of their lien claims in connection with any bid made by them, or purchase price to be paid by them. The bid by Mr. Katz on September 6, 1957 in the name of S. Kohn was announced as, and, in fact, was the bid of and on behalf of Leroy and Rosehedge, and was so

considered and treated by the Referee, and all persons present at said sale. This bid was made subject to the liens and claims of Leroy and Rosehedge. This, in the opinion of the Referee, at the time of sale, was the equivalent of utilizing the value of the Leroy and Rosehedge claims upon the bid made. Had the bid been increased by the value of such lien claims, a credit upon the purchase price in the amount of the value of the said lien claim would have had to be given. Such procedure would have been a useless and idle act. (6 Remington—Henderson—114; *In re Harralson*, 179 F. 490, 492, 493. Under similar circumstances, the Court states, 'The Creditor was entitled to have the purchase price credited on his allowed claim. It would have been a useless ceremony for him to pay the \$1500.00 into Court and then have it repaid to him after credit on his allowed claim.' See also *Wolffgram v. Marsh*, 280 F. 865, 866.)"

Thus, it is obvious that the claim of Rosehedge has been satisfied, by utilizing the full amount of said claim in making the bid on the property at the time of sale. Although Rosehedge was protected by two securities, the Rosehedge chattel mortgage and the pledge of the Shulman trust deed, it is obvious that Rosehedge is entitled to but one satisfaction. Having been satisfied once, Rosehedge has no further claim under its chattel mortgage. This, however, Rosehedge refuses to acknowledge. Thus, Millie Sterett is aggrieved by the Order of September 23, 1957 and this proceeding, in the event the



Referee's Orders are affirmed, should adjudicate that as a condition precedent to completion of the escrow heretofore opened by Rosehedge and Leroy, there should be placed on deposit therein a discharge and satisfaction of the Rosehedge chattel mortgage to be recorded upon close of escrow.

Wherefore, petitioners pray that the Honorable District Court order the above entitled matter to be sent back to the Referee for additional hearings; that said Order of September 23, 1957 be reversed and that in the event the Honorable District Court should affirm said Referee's Order, said Court should adjudicate that as a condition precedent to completion of the escrow heretofore opened by Leroy and Rosehedge, there should be placed on deposit therein a discharge and satisfaction of the Rosehedge chattel mortgage to be recorded upon close of escrow and for such other relief which the Court deems proper and just.

Respectfully submitted,

ARTHUR N. GREENBERG,  
ROBERT COHEN,

/s/ By ARTHUR N. GREENBERG,

Attorney for Petitioners Alexander Bisno, Millie Sterett and Bernice Gurewitz.

[Endorsed]: Filed October 28, 1957.

[Title of District Court and Causes.]

JOINDER OF MILLIE STERETT  
IN PETITIONS FOR REVIEW

The undersigned Millie Sterett has authorized Alexander Bisno to sign on her behalf the Petitions for Review of Referee's Orders dated September 6, 1957 and September 23, 1957 filed herein.

Millie Sterett hereby personally joins in said Petitions for Review.

Millie Sterett has read said Petitions for Review and knows the contents thereof; that the same is true of her own knowledge, except as to the matters which are therein stated upon information or belief and as to those matters, she believes them to be true.

Dated: October 25, 1957.

/s/ MILLIE STERETT.

Duly Verified.

[Endorsed]: Filed October 28, 1957.

In the District Court of the United States  
for the District of Nevada

In Bankruptcy No. 921

IN THE MATTER OF THE PROPERTIES  
MOULIN ROUGE, INC., a corporation and  
successor in interest to MOULIN ROUGE, a  
Limited Partnership, Bankrupt.

In Bankruptcy No. 925

IN THE MATTER OF MOULIN ROUGE, a  
Limited Partnership, Bankrupt.

ORDER CONFIRMING, AFFIRMING AND  
APPROVING REFEREE'S ORDER,  
DATED SEPTEMBER 23, 1957, AS MODI-  
FIED BY COURT

At Las Vegas, in Said District, on the 7th Day  
of November, 1957.

The following Petitions for Review, to wit: (a) Petition for Review of Referee's Order dated September 23, 1957, filed by Alexander Bisno, (and Alexander Bisno on behalf of Millie Sterett and Bernice Gurewitz); (b) Petition for Review of Referee's Order dated September 23, 1957, filed by Jack Silverman; (c) Petition for Review of Referee's Order dated September 23, 1957, filed by Lawrence Hawthorne; and (3) Petition for Review of Referee's Order Confirming Sale of Property Free and Clear of Liens, Excepting Certain Speci-

fied Liens, filed by the District Director of Internal Revenue, for the District of Nevada, came on regularly to be heard on the 28th day of October, 1957, at the hour of 1:30 o'clock p.m. of said day, before the Honorable John R. Ross, United States District Judge for the District of Nevada, sitting at Las Vegas, Nevada; the Petitioners, Alexander Bisno, Millie Sterett and Bernice Gurewitz, appearing by their counsel, Arthur N. Greenburg, Esq. [152] and Robert Cohen, Esq.; and the Petitioner, Jack Silverman, appearing by his counsel, Messrs. Fink, Leventhal and Lavery, by Cyrus Leventhal, Esq. and Thomas A. Foley, Esq.; and the Petitioner, Lawrence Hawthorne, appearing by his counsel, Harry E. Claiborne, Esq.; and the Petitioner, District Director of Internal Revenue, appearing by his counsel, Franklin Rittenhouse, Esq., United States Attorney, and Howard W. Babcock, Esq., Assistant United States Attorney, and Leon Yudkin, Esq., Assistant Regional Counsel for the Internal Revenue Department; and the Respondents, LeRoy Investment Co., Inc. and Rosehedge Corporation, appearing by their counsel, Charles J. Katz, Esq., Samuel W. Blum, Esq., and William G. Ruymann, Esq.; and the Trustee, Harry E. Miller, appearing by his counsel, Messrs. Quittner, Stutman and Treister, by Francis F. Quittner, Esq. and Messrs. Morse, Graves and Compton, by Harold Morse, Esq., and the Petition of the District Director of Internal Revenue having been amended at said hearing to specifically refer to Referee's Order dated September 23, 1957, and it having

been stipulated between counsel for Respondents and counsel for District Director of Internal Revenue, and counsel for Trustee that the following provision of Referee's order, dated September 23, 1957, reading as follows:

“(1) State, County and City Taxes for the period January 1, 1955 through June 30, 1955, and to date now due and payable, or owing though not now payable.”,

be deleted therefrom, and that said Order be modified in the particulars hereinafter set forth; and it further being stipulated between counsel for Respondents and counsel for Trustee that the bid of S. Kohn be increased in the sum of \$1500.00 to cover the cost of preservation of the real and personal property involved herein, from the date of sale to the date when possession of said real and personal property shall be delivered to said Purchaser, S. Kohn, or nominee; and the matters in support of said petitions having been fully argued by counsel for the respective Petitioners, and the matters in opposition to such petitions having been fully argued by counsel for the Respondents and by counsel for Trustee, and the matter having been submitted to the Court for deliberation and consideration, and the Court having duly [153] considered the same; and it further appearing to the Court that the statements of fact and the recitals of the proceedings had, as set forth in the aforementioned Referee's Order, dated September 23, 1957, are correct, and by reference are made a part



hereof, and that each of the Petitioners on Review herein were given and received due notice of each and all of said proceedings, including the notice of hearing of Trustee's Petition to Sell Real Property and of Trustee's Petition to Sell Property Free and Clear of Liens, and the Supplemental Petition thereto, and having interposed no objections thereto, and that on the 6th day of July, 1956, an Order was duly made by the Referee and filed in the above bankrupt proceedings authorizing the sale of said real property therein described, and involved herein, in accordance with the terms of the Bankruptcy Act, and further authorizing the sale of the property therein described and referred to, free and clear of liens; and it further appearing that none of the Petitioners on Review, or anyone else, interposed any objections to said Order of July 6, 1956; or took any reviews therefrom, and that the said Order of July 6, 1956, has become and now is final; and it further appearing to the Court that none of the petitioners on Review appeared at the said sale held on September 6, 1957, before the Referee in open Court, excepting only the Petitioner, Lawrence Hawthorne, who appeared by his attorney, and that at such sale no objections to the bid made by S. Kohn, or to the form of said bid, were interposed for, or on behalf of any of the Petitioners on Review, or by anyone else; that no bid for or on behalf of any of the Petitioners on Review was made at said sale; that no objections or exceptions to the said sale, or to the bid made by S. Kohn thereat, or to the form of said bid, or to the confir-

mation of said sale, were made or filed by or on behalf of any of the Petitioners on Review, or by anyone else, at any time prior to the signing and filing on September 23, 1957, of the Referee's Order confirming said sale; and that none of the Petitioners on Review have shown that any higher or better bid, offer or sale can be had for the property involved herein; and it further appearing to the Court that the said bid of S. Kohn, and the sale made pursuant thereto, on the 6th day of September, 1957, and confirmed by Referee's Order, dated September 23, 1957, complied with the terms of Referee's Order of [154] July 6, 1956; that said bid made by S. Kohn on September 6, 1957, in open Court, was made in behalf of LeRoy Investment Co., Inc. and Rosehedge Corporation; that the bid of S. Kohn was the highest and best bid made and received at said sale and was the highest and best bid that could have been obtained for said property, and conformed, in form and effect, with the terms and provisions of the Order of July 6, 1956; that said sale conducted by the Referee in open Court on September 6, 1957, was a public sale, and was legally made and fairly and impartially conducted, and was in all respects regular and in accordance with the Orders of this Court, and the provisions of the Bankruptcy Act; that due notice of the time and place of sale was given to all creditors of the above Bankrupt Estates, and to all lien holders and lien claimants, attorneys, and other parties in interest, including all of the Petitioners on Review, as required and provided by law, and

the provisions of the Bankruptcy Act; and that due notice of said sale and the place and time thereof was given to the general public in the form and manner and for the time as required by law and the Bankruptcy Act; and that the said sale is in the best interests of the Bankrupt Estates;

Now, Therefore, Good Cause Appearing, It Is Hereby Ordered, Adjudged and Decreed As Follows:

I.

That the Order of the Referee, dated September 23, 1957, and entitled, Order Confirming Sale of Property Free and Clear of Liens, Excepting Certain Specified Liens, be, and the same is hereby modified, in the following particulars:

That certain provision of the aforementioned Referee's Order, on Page 5 thereof (lines 5 to 7 inclusive), and reading as follows:

“(1) State, County and City Taxes for the period January 1, 1955 through June 30, 1955, and to date now due and payable, or owing though not now payable.”

shall be, and the same is hereby deleted and stricken from the [155] aforesaid Order, and in lieu thereof, the following provision shall be, and hereby is inserted therein, and shall be, and is applicable thereto, to wit:

“(1) All Federal, State, County and City taxes now due and payable; and all State, County and City taxes which will be due and payable, or will

be owing, though not payable, up to and including the date of the close of the escrow hereinafter mentioned, including all State, County and City taxes accruing, or to accrue, since the filing of the Chapter XI proceedings herein on October 19, 1955, but in a total amount not in excess of the total sum of \$52,000.00, for the total of all such Federal, State, County and City taxes, as aforesaid; and the Referee hereafter shall determine and fix the nature, order, rank, priority and amount of the respective portions of the said \$52,000.00 to which each of the aforesaid tax claimants are, or may be entitled, including such State, County and City taxes accruing, or to accrue, since the filing of the Chapter XI proceedings herein on October 19, 1955, and up to and including the date of the close of the escrow hereinafter mentioned; that except for the aforementioned taxes, in an amount not in excess of the total of \$52,000.00, for the total of all Federal, State, County and City taxes, as aforesaid, the real property described in Referee's Order, dated September 23, 1957, and the personal property therein referred to, are, and each is, sold free and clear of all Federal, State, County and City taxes, and tax liens, up to and including the date of the close of the escrow hereinafter mentioned." [156]

## II.

That the aforementioned Order of the Referee, dated September 23, 1957, as herein modified, be, and the same is hereby affirmed, confirmed, and approved in all respects.



That the sale of the real property described in the aforementioned Order of the Referee, dated September 23, 1957, and sold and confirmed to S. Kohn, is a sale free and clear of all taxes, liens and encumbrances, and particularly the taxes, liens and encumbrances set forth in Referee's Order, dated July 6, 1956, entitled, Order For Sale of Property and Order Authorizing Sale of Property Free and Clear of Liens, except as otherwise expressly provided in Paragraph I hereof, and in Subparagraphs (2), (3), (4), (5) and (6), of the Order of the Referee, dated September 23, 1957, as set forth on Pages 5 and 6 thereof.

### III.

That the Petition for Review of the aforementioned Order of the Referee, dated September 23, 1957, filed by Alexander Bisno and Bernice Gurewitz, be, and the same is hereby dismissed as to each of said Petitioners, and the relief sought by said Petitioners in the aforesaid Petition for Review is denied, and said Petitioners' objections to the aforementioned Order of the Referee, dated September 23, 1957, are, and each of them is, overruled.

That the Petition for Review of the aforementioned Order of the Referee, dated September 23, 1957, filed on behalf of Millie Sterett, be, and the same is hereby dismissed, and the relief sought by said Petitioner in the aforesaid Petition for Review is denied, and the said Petitioner's objections to the aforementioned Referee's Order, dated Sep-



tember 23, 1957, are, and each of them is, overruled; provided, however, that the Respondent, Rosehedge Corporation, shall deposit in that certain escrow hereinafter mentioned, and prior to the close thereof, a full Release of Chattel Mortgage of that certain Chattel Mortgage, dated May 24, 1955, and executed by Alexander Bisno, a married man, and Louis Rubin, a married man, general partners, doing business as Moulin Rouge, a partnership, as Mortgagors, to Rosehedge Corporation, a California corporation, as Mortgagee, and recorded as Document No. 47539, [157] in Book 56, Official Records, in the office of the County Recorder of Clark County, Nevada, and upon the close of said escrow, said Release of Chattel Mortgage shall be delivered to Petitioner, Millie Sterett. Such Release of Chattel Mortgage shall be without prejudice to the rights and claims of Rosehedge Corporation to interpose or assert any and all claims and defenses, except the claim of priority, to the validity and efficacy of the Chattel Mortgage dated July 5, 1955, and executed by Moulin Rouge, A Limited Partnership, Louis Rubin and Alexander Bisno, General Partners thereof, as Mortgagors, to Millie Sterett, as Mortgagee, and recorded July 13, 1955, as Document No. 51829, in Book 61, Official Records, and filed in File 19 in the office of the County Recorder of Clark County, Nevada.

#### IV.

That the Petition for Review of the aforementioned Order of the Referee, dated September 23,

1957, filed by Jack Silverman, be, and the same is hereby dismissed, and the relief sought by said Petitioner in the aforesaid Petition for Review is denied, and said Petitioner's objections to the aforementioned Order of the Referee, dated September 23, 1957, are, and each of them is, overruled.

#### V.

That the Petition for Review of the aforementioned Order of the Referee, dated September 23, 1957, filed by Lawrence Hawthorne, be, and the same is hereby dismissed, and the relief sought by said Petitioner in the aforesaid Petition for Review is denied, and said Petitioner's objections to the aforesaid Order of the Referee, dated September 23, 1957, are, and each of them is, overruled.

#### VI.

That the Petition for Review, as amended, of the aforementioned Order of the Referee, dated September 23, 1957, filed by the District Director of Internal Revenue, for the District of Nevada, be, and the same is hereby dismissed, and the relief sought by said Petitioner in the aforesaid Petition for Review, as amended, is denied, and the Petitioner's objections to the aforementioned Order of the Referee, dated September 23, 1957, are, and each of [158] them is, overruled, except as otherwise provided in Paragraph I hereof.

#### VII.

That the purchase price of \$116,000.00, and the

additional sum of \$1500.00, shall be paid by Purchaser, S. Kohn, to the Trustee, Harry E. Miller, through and upon the close of that certain escrow now pending between S. Kohn, as Purchaser, and Harry E. Miller, Trustee, at the Pioneer Title Insurance Company, Las Vegas, Nevada, being Escrow No. LV50976-F; that immediately upon the deposit of the aforesaid sums of \$116,000.00 and \$1500.00 into the aforementioned escrow by Purchaser, S. Kohn, full possession of the said real and personal property described and referred to in the aforementioned Order of the Referee, dated September 23, 1957, shall be delivered by Harry E. Miller, Trustee, to Purchaser, S. Kohn, or nominee, who thereupon shall be entitled to the use thereof and the benefits therefrom, and after the delivery of possession, as aforesaid, LeRoy Investment Co., Inc. and Rosehedge Corporation and the Purchaser shall be responsible and liable for all costs and expenses of preservation of said real and personal property, and shall hold the Trustee, Harry E. Miller, harmless therefrom; that the aforesaid escrow shall not close, or be closed prior to the time this Order shall become final, and the moneys deposited therein by the Purchaser, or any part thereof, shall not be disbursed to the Seller, Harry E. Miller, Trustee, at any time prior to the close of said escrow; that in the event the aforesaid escrow cannot close and the real property described in the Order of the Referee, dated September 23, 1957, cannot be delivered to the Purchaser, S. Kohn, or nominee, free and clear of all taxes,

liens and encumbrances, except as otherwise herein provided, and as otherwise provided in the Order of the Referee, dated September 23, 1957, as modified herein, and a policy of Title Insurance upon said real property cannot be so written by Pioneer Title Insurance Company and delivered to Purchaser, then the aforesaid sums of \$116,000.00 and \$1500.00, deposited in the aforesaid escrow by S. Kohn, Purchaser, as aforesaid, shall be returned to said Purchaser, and the said real and personal property, subject to reasonable use, wear and tear, and subject further to the exercise of the superior claims and rights of Conditional Sales Contract [159] Sellers and Chattel Mortgagees, shall forthwith be returned and delivered to the Trustee herein, and the Release of Chattel Mortgage shall be returned to Rosehedge Corporation.

/s/ JOHN R. ROSS,  
United States District  
Judge. [160]

[Endorsed]: Filed November 7, 1957.

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[Title of District Court and Causes.]

### NOTICE OF APPEAL

Notice Is Hereby Given that Rosehedge Corporation hereby appeals to the United States Court of Appeals for the Ninth Circuit from that certain portion hereinafter set forth of that certain Order Confirming, Affirming, and Approving Referee's Order dated September 23, 1957, as modified by the



Court, and signed and filed November 7, 1957, and entered on November 9, 1957.

Said portion of the aforesaid Order from which Rosehedge Corporation appeals, as aforesaid, is that portion of Paragraph III thereof reading as follows: [166]

“\* \* \* provided, however, that the Respondent, Rosehedge Corporation, shall deposit in that certain escrow hereinafter mentioned, and prior to the close thereof, a full Release of Chattel Mortgage of that certain Chattel Mortgage, dated May 24, 1955, and executed by Alexander Bisno, a married man, and Louis Rubin, a married man, general partners, doing business as Moulin Rouge, a partnership, as Mortgagors, to Rosehedge Corporation, a California corporation, as Mortgagee, and recorded as Document No. 47539, in Book 56, Official Records, in the office of the County Recorder of Clark County, Nevada, and upon the close of said escrow, said Release of Chattel Mortgage shall be delivered to Petitioner, Millie Sterett. Such Release of Chattel Mortgage shall be without prejudice to the rights and claims of Rosehedge Corporation to interpose or assert any and all claims and defenses, except the claim of priority, to the validity and efficacy of the Chattel Mortgage dated July 5, 1955, and executed by Moulin Rouge, a Limited Partnership, Louis Rubin and Alexander Bisno, General Partners thereof, as Mortgagors, to Millie Sterett, as Mortgagee, and recorded July 13, 1955, as Document No. 51829, in Book 61, Official Records, and



filed in File 19 in the office of the County Recorder of Clark County, Nevada.”

Rosehedge Corporation does not appeal from any other part or portion of the aforesaid Order, except as hereinbefore specifically set forth. [167]

The names and addresses of appellant's attorneys are: William G. Ruymann, 219 Fremont Street, Las Vegas, Nevada. Charles J. Katz and Samuel W. Blum, 325 West Eighth Street, 707 Union Bank Building, Los Angeles 14, California.

Dated: December 11, 1957.

WILLIAM G. RUYMANN,  
CHARLES J. KATZ,  
SAMUEL W. BLUM,

/s/ By SAMUEL W. BLUM,

Attorneys for Appellant, Rose-  
hedge Corporation. [168]

Affidavit of Service by Mail Attached.

[Endorsed]: Filed December 12, 1957.

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[Title of District Court and Causes.]

#### UNDERTAKING FOR COSTS ON APPEAL

Know All Men by These Presents, That St. Paul Fire and Marine Insurance Company, a corporation duly organized and existing under the laws of the State of Minnesota and duly licensed to transact business as Surety in the State of Nevada is

held and firmly bound unto Millie Street in the penal sum of Two Hundred Fifty and No/100ths (\$250.00) Dollars to be paid to the said Millie Sterett, or her duly authorized legal representative, for the payment whereof, well and truly, to be made the St. Paul Fire and Marine Insurance Company binds itself, its successors and assigns, firmly by these presents.

The condition of the above obligation is such, that

Whereas, Rosehedge Corporation has appealed, or is about to appeal, to the United States Court of Appeals for the Ninth Circuit from a portion of that certain Order duly made and entered in the above entitled Court, all as more specifically set out in that certain Notice of Appeal dated December 11, 1957, [169] and filed December 12, 1957.

Now, Therefore, If Rosehedge Corporation, as appellant aforesaid, shall prosecute said appeal to effect and answer all costs which may be adjudged against it if the appeal be dismissed, or such costs as the Appellate Court may award if the order be modified, then this obligation shall be void; otherwise, to remain in full force and effect.

It Is Hereby Agreed by the Surety, that in case of default or contumacy on the part of the Appellant or Surety, the Court may, upon notice to them of not less than ten (10) days proceed summarily and render judgment against them, or either of them, in accordance with their obligation, and award execution thereon.

Signed, Sealed and Dated this 16th day of December, 1957.

[Seal] ST. PAUL FIRE AND MARINE  
INSURANCE COMPANY,

/s/ By C. E. TELANDER,  
Attorney-in-Fact.

Acknowledgment of Attorney-in-Fact

State of California,  
County of Los Angeles—ss.

On this 16th day of December, 1957, before me, a Notary Public, within and for the said County and State, personally appeared C. E. Telander, known to me to be the person whose name is subscribed to the within instrument as the Attorney-in-Fact of and for the St. Paul Fire and Marine Insurance Company, Saint Paul, Minnesota, a corporation created, organized and existing under and by virtue of the laws of the State of Minnesota, and acknowledged to me that he subscribed the name of the St. Paul Fire and Marine Insurance Company thereto as Surety, and his own name as Attorney-in-Fact.

[Seal] /s/ MARJORIE A. HUDSON,  
Notary Public. My Commission  
Expires 4-29-59.

[Endorsed]: Filed December 26, 1957.

[Title of District Court and Causes.]

DESIGNATION OF CONTENTS OF RECORD  
ON APPEAL IN CONNECTION WITH  
THE APPEAL OF ROSEHEDGE COR-  
PORATION

To the Clerk of the Above Entitled Court:

Pursuant to Rule 75a of the Federal Rules of Civil Procedure, appellant Rosehedge Corporation hereby designates for inclusion in the record on appeal to the United States Court of Appeals for the Ninth Circuit taken by Notice of Appeal filed by Rosehedge Corporation on December 12, 1957 from a certain portion of that certain "Order Confirming, Affirming and Approving Referee's Order dated September 23, 1957, As Modified [171] by the Court", and signed and filed November 7, 1957, and entered on November 9, 1957, the following portions of the records, pleadings and evidence in this action.

1. Order Confirming, Affirming and Approving Referee's Order dated September 23, 1957, as Modified by the Court, and signed and filed on November 7, 1957, and entered on November 9, 1957.

2. Petition for Review of Referee's Order Confirming Sale of Property Free and Clear of Liens Excepting Certain Specified Liens dated September 23, 1957 filed by or on behalf of Millie Sterrett.

3. Referee's Order Confirming Sale of Property Free and Clear of Liens, excepting Certain Speci-

fied Liens Dated September 23, 1957 and signed by John C. Mowbray, Referee in Bankruptcy.

4. The written bid of S. Kohn filed with the Referee in Bankruptcy, Honorable John C. Mowbray, on September 6, 1957.

5. Notice of Appeal filed by Rosehedge Corporation on December 12, 1957.

6. The following parts and portions of Referee's Certificate on Petitions filed by Alexander Bisno (and Alexander Bisno on behalf of Millie Sterrett and Bernice Gurewitz), and by Jack Silverman for Review of Referee's Order Dated September 23, 1957:

(a) That portion contained from page 1 line 22 to and including page 2 line 6, thereof, ending with the figures "1957".

(b) That portion contained on page 2 thereof, commencing on line 9 to and including page 3 line 2 thereof.

(c) That portion of page 3, lines 15 to 29 inclusive, ending with the word "full".

(d) That portion thereof commencing on page 4, [172] line 1 thereof, to and including page 10, line 17 thereof, and ending with the word "interest".

(e) That portion thereof commencing on page 10, line 19 thereof, to and including page 10a, line 24 thereof.

(f) That portion thereof on page 23, lines 24 and 25 inclusive.



(g) That portion thereof on page 24, lines 19 to 22 inclusive, ending with the figure "1956".

(h) That portion thereof on page 24, commencing with line 19 to and including page 27, line 12 thereof.

(i) That portion thereof on page 27, lines 23 to 29 inclusive.

(j) That portion thereof on page 28, lines 1 to 8 inclusive.

(k) That portion thereof on page 28, lines 19 to 29 inclusive, ending with the word "Referee".

(l) That portion thereof on page 29 commencing with the words "the said sale" on line 2, to and including line 8.

(m) That portion of page 30, lines 1 to 10 inclusive.

(n) That portion of page 30, lines 19 to 31 inclusive, ending with the word "Court".

(o) That portion of page 31, line 17, commencing with the words "After some discussion" to and including page 37, line 20, ending with the word "Kohn".

(p) That portion thereof on page 37 commencing on line 24, to and including line 8, page 38, ending with the word "Sale".

(q) That portion thereof commencing on page 38, line 13, to page 39, line 25. [173]

(r) That portion thereof on page 40, line 20, to and including page 41, line 18 thereof.

(s) That portion thereof on page 43, lines 15 to 19 inclusive, ending with the word "same".

(t) That portion of page 43 commencing on line 20 with the words "The net", to and including page 44, line 6.

(u) That portion thereof commencing on page 44, line 13, to and including page 45, line 28 thereof.

(v) That portion thereof on page 46, lines 1 to 23 inclusive.

(w) That portion thereof on page 47, lines 25 to 27 inclusive.

7. The following portions of Referee's Certificate on Petition filed by Alexander Bisno (on behalf of Millie Sterrett and Bernice Gurewitz) and by Lawrence Hawthorne and Jack Silverman for Review of Referee's Order dated September 6, 1957:

(a) Page 1 thereof, lines 24 to page 2, line 2 thereof, ending with the figures "1957".

(b) That portion thereof on page 2, lines 9 to 26 inclusive.

(c) That portion thereof on page 24, line 12, to page 25, line 15 inclusive.

8. Order of September 6, 1957, which provides, among other things, (1) Granting Motion of LeRoy Investment Co., Inc., et al.; (2) Overruling and denying objections of Trustee, etc.; (3) Upholding validity of the pledges and the liens thereof, etc.; (4) Upholding the validity and lien of the pledged property, etc.

9. Undertaking for Costs on Appeal.
10. Statement of Points on Appeal.
11. This Designation of Contents of Record on Appeal, etc. [174]
12. Referee's Order of July 6, 1956.
13. Petition for Review of Referee's Order dated September 6, 1957 filed by, or on behalf of Millie Sterrett, which has been incorporated by reference in Petition for Review of Referee's Order dated September 23, 1957.

Dated: January 15, 1958.

WILLIAM G. RUYMANN,  
CHARLES J. KATZ,  
SAMUEL W. BLUM,  
/s/ By SAMUEL W. BLUM,  
Attorneys for Appellant Rose-  
hedge Corporation. [175]

Affidavit of Service by Mail Attached.

[Endorsed]: Filed January 16, 1958.

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[Title of District Court and Causes.]

# STATEMENT OF POINTS ON APPEAL IN THE APPEAL BY ROSEHEDGE COR- PORATION

The Appellant, Rosehedge Corporation, herewith presents the points upon which it intends to rely, and upon which it claims that the Honorable District Court erred in rendering that certain portion of the Order entitled "Order Confirming, Affirm-

ing, and Approving Referee's Order dated September 23, 1957, as Modified by Court", and dated and filed November 7, 1957, from which portion Rosehedge Corporation has appealed to the United States Court of Appeal for the Ninth Circuit. Said portion from [176] which said appeal has been taken is specified and set forth in the Notice of Appeal filed by Rosehedge Corporation on November 12, 1957, reference to which Notice is hereby made for further particulars. Said points upon which Rosehedge intends to rely are as follows:

1. The Honorable District Court erred in making and rendering that certain portion of that certain Order dated November 7, 1957 entitled "Order Confirming, Affirming and Approving Referee's Order dated September 23, 1957, as Modified by the Court," contained in paragraph III thereof, wherein the Court, among other things, ordered that Rosehedge Corporation shall deposit in the escrow referred to and mentioned in said Order, and prior to the close thereof, a full release of chattel mortgage of that certain Chattel Mortgage, dated May 24, 1955, and executed by Alexander Bisno, a married man, and Louis Rubin, a married man, general partners, doing business as Moulin Rouge, a partnership, as Mortgagors, to Rosehedge Corporation, a California corporation, as Mortgagee, and recorded as Document No. 47539, in Book 56, Official Records, in the office of the County Recorder of Clark County, Nevada, and upon the close of said escrow, said Release of Chattel Mortgage shall be delivered to Petitioner, Millie Sterett.

2. The Honorable District Court erred in making and rendering that certain portion of that certain Order dated November 7, 1957, and hereinbefore more particularly specified, contained in paragraph III thereof, wherein the Court ordered that Rosehedge Corporation shall deposit in the certain escrow mentioned and referred to in the said Order, and prior to the close thereof, a full release of Chattel Mortgage of that certain Chattel Mortgage, hereinbefore more particularly specified, and set forth under point 1 hereof, and directing that said full release of Chattel Mortgage be delivered to Millie Sterrett at the close of escrow, as a condition to the dismissal of the Petition for Review [177] of the Order of the Referee dated September 23, 1957, filed on behalf of Millie Sterrett, and to the denial of the relief sought thereby.

3. The Honorable District Court erred in holding and ruling that Millie Sterrett was a person aggrieved by the Referee's Order dated September 23, 1957.

4. The Honorable District Court erred in holding and ruling that the sale of the personal property by the Referee on September 6, 1957, and confirmed by the Order dated September 23, 1957, was not a sale of said property subject to the chattel mortgage of Millie Sterrett, but rather that said sale extinguished the prior chattel mortgage held by Rosehedge Corporation upon said property.

5. The Honorable District Court erred in rendering and making that portion of the Order of November 7, 1957 from which Rosehedge Corpora-



tion has appealed, in that said portion of the Order is unsupported by the evidence.

6. The Honorable District Court erred in rendering and making that portion of the Order of November 7, 1957 from which Rosehedge Corporation has appealed, in that said portion of the Order is contrary to the evidence in this proceeding.

7. The Honorable District Court erred in rendering that portion of the Order of November 7, 1957, hereinbefore more particularly set forth, from which appellant Rosehedge Corporation has appealed, in that said portion of the Order was made and rendered by the Honorable District Court without due process of law, in that no hearing was had, or evidence presented upon the question of whether or not the Chattel Mortgage held by Rosehedge Corporation was extinguished by the sale of the personal property to S. Kohn, as provided by Referee's Order dated September 23, 1957.

8. The Honorable District Court erred in rendering and making that certain portion of the Order of November 7, 1957 from [178] which Rosehedge Corporation has appealed, and hereinbefore more particularly set forth, in that the Petition on Review filed by or on behalf of Millie Sterrett from Referee's Order dated September 23, 1957 does not contain or specify any grounds of review or specification of error relating to or concerning the extinguishment of the Chattel Mortgage held by Rosehedge Corporation upon the personal property by reason of the sale of said personal property to S. Kohn by the Referee on September 6, 1957, and

confirmed by Referee's Order dated September 23, 1957.

9. That the Honorable District Court erred in rendering and making that portion of the Order of November 7, 1957 from which Rosehedge Corporation has appealed, as hereinbefore more particularly set forth, in that in making and rendering that portion of said Order, the Honorable District Court exceeded its jurisdiction in the matter.

10. The Honorable District Court erred in rendering and making that portion of the Order of November 7, 1957, hereinbefore more particularly set forth, and from which Rosehedge Corporation has appealed, in that said Honorable District Court should have dismissed the Petition for Review filed by, or on behalf of Millie Sterrett from Referee's Order of September 23, 1957, because of the insufficiency of such Petition for Review, both in form or contents.

Dated: January 15, 1958.

Respectfully submitted,

WILLIAM G. RUYMANN,  
CHARLES J. KATZ,  
SAMUEL W. BLUM,

/s/ By SAMUEL W. BLUM,

Attorneys for Appellant, Rose-  
hedge Corporation. [179]

Affidavit of Service by Mail Attached.

[Endorsed]: Filed January 16, 1958.

[Title of District Court and Causes.]

APPELLEE MILLIE STERETT'S DESIGN-  
NATION OF RECORD ON APPEAL

To the Clerk of the Above Entitled Court:

Pursuant to Rule 75(a) of the Federal Rules of Civil Procedure, appellee Millie Sterett hereby designates for inclusion in the record on appeal to the United States Court of Appeals for the Ninth Circuit taken by Notice of Appeal filed by Rosehedge Corporation on December 12, 1957 from a certain portion of that certain "Order Confirming, Affirming and Approving Referee's Order dated September 23, 1957, as Modified by the court", and signed and filed November 7, 1957, and entered on November 9, 1957, the following portions of the records, pleadings and evidence in this action.

1. Proof of Claim of Millie Sterett filed in the above entitled bankruptcy.

2. Copy of promissory note attached as an exhibit to said Proof of Claim.

3. Certified copy of Mortgage of Chattels attached as an exhibit to said Proof of Claim.

4. The following portions of Referee's Certificate on Petition filed by appellee and others for review of Referee's Order dated September 6, 1957:

a. That portion commencing on page 36, line 27 to and including page 40, line 25, ending with the word "trust".

5. The following portions of Referee's Certificate on Petition filed by appellee and others for review of Referee's Order dated September 23, 1957.

a. That portion commencing on page 10, line 25 to and including page 11, line 11, ending with the figures "1656".

b. That portion commencing on Page 13, Line 1 to and including Page 13, line 13, ending with the word "bidders".

6. Stipulation dated June 19, 1956 between the trustee in bankruptcy, LeRoy Investment Company, Inc. and Rosehedge Corporation, which stipulation was approved by the Referee.

7. Order for Sale of Property and Order authorizing Sale of Property Free and Clear of Liens dated July 6, 1956.

8. The following portions of appellee's Memorandum of Law in Support of Petition for Review of Referee's Order dated September 23, 1957:

a. That portion commencing on page 1, line 19 to and including page 1, line 24, ending with the word "bankrupt".

b. That portion commencing on page 6, line 8 to and including page 8, line 9, ending with the word "just".

9. Joinder of Millie Sterett in Petitions for Review.

Dated: January 24, 1958.

ARTHUR N. GREENBERG and  
ROBERT COHEN,

/s/ By ARTHUR N. GREENBERG,  
Attorneys for Appellee Millie  
Sterett.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed January 28, 1958.

[Title of District Court and Causes.]

### CERTIFICATE OF CLERK

I, Oliver F. Pratt, Clerk of the United States District Court for the District of Nevada, do hereby certify that the accompanying documents and exhibits, listed in the attached Index, are the originals filed in this court, or true and correct copies of orders entered on the minutes or dockets of this court, in the above-entitled case, and that they constitute the record on appeal herein as designated by the parties.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court this 18th day of February, 1958.

[Seal]                      OLIVER F. PRATT,  
Clerk,

/s/ By RAY MONA SMITH,  
Deputy. [180]



[Endorsed]: No. 15915. United States Court of Appeals for the Ninth Circuit. Rosehedge Corporation, Appellant, vs. Millie Sterrett, Appellee. Transcript of Record. Appeal from the United States District Court for the District of Nevada.

Filed: February 19, 1958.

Docketed: March 5, 1958.

Supplemental Filed: March 11, 1958.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.

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United States Court of Appeals  
For The Ninth Circuit

No. 15915

ROSEHEDGE CORPORATION, a corporation,  
Appellant,

vs.

MILLIE STERETT, Appellee.

STATEMENT OF POINTS ON APPEAL RE-  
LIED UPON BY ROSEHEDGE CORPORA-  
TION

To the Clerk of the Above Entitled Court:

The Appellant, Rosehedge Corporation, herewith adopts as its Statement of Points on Appeal that certain Statement entitled "Statement of Points on Appeal in the Appeal by Rosehedge Corpora-

tion'' now appearing in the typewritten record of this appeal, and makes the same as part of the record on this appeal as the Statement of Points on Appeal relied upon by Appellant Rosehedge Corporation by this reference, the same as though set forth herein in full.

Dated: March 25, 1958.

Respectfully submitted,

CHARLES J. KATZ,  
SAMUEL W. BLUM,  
WILLIAM G. RUYMANN,

/s/ By SAMUEL W. BLUM,  
Attorneys for Appellant,  
Rosehedge Corporation.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed March 27, 1958. Paul P. O'Brien, Clerk.

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[Title of Court of Appeals and Cause.]

DESIGNATION OF CONTENTS OF RECORD,  
BY APPELLANT ROSEHEDGE COR-  
PORATION, MATERIAL TO THE CON-  
SIDERATION OF ITS APPEAL

To the Clerk of the Above Entitled Court:

The Appellant, Rosehedge Corporation, does hereby adopt, as its Designation of the Record, Material to the Consideration of its Appeal, that certain Designation entitled "Designation of Contents of Record on Appeal In Connection With

The Appeal of Rosehedge Corporation" now appearing in the typewritten record of this appeal and makes the same a part of the record on this appeal as the Designation of Contents of Record on Appeal by Appellant Rosehedge Corporation by this reference the same as though set forth herein in full.

Dated: March 25, 1958.

Respectfully submitted,

CHARLES J. KATZ,  
SAMUEL W. BLUM,  
WILLIAM G. RUYMANN,

/s/ By SAMUEL W. BLUM,  
Attorneys for Appellant,  
Rosehedge Corporation.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed March 27, 1958. Paul P. O'Brien, Clerk.